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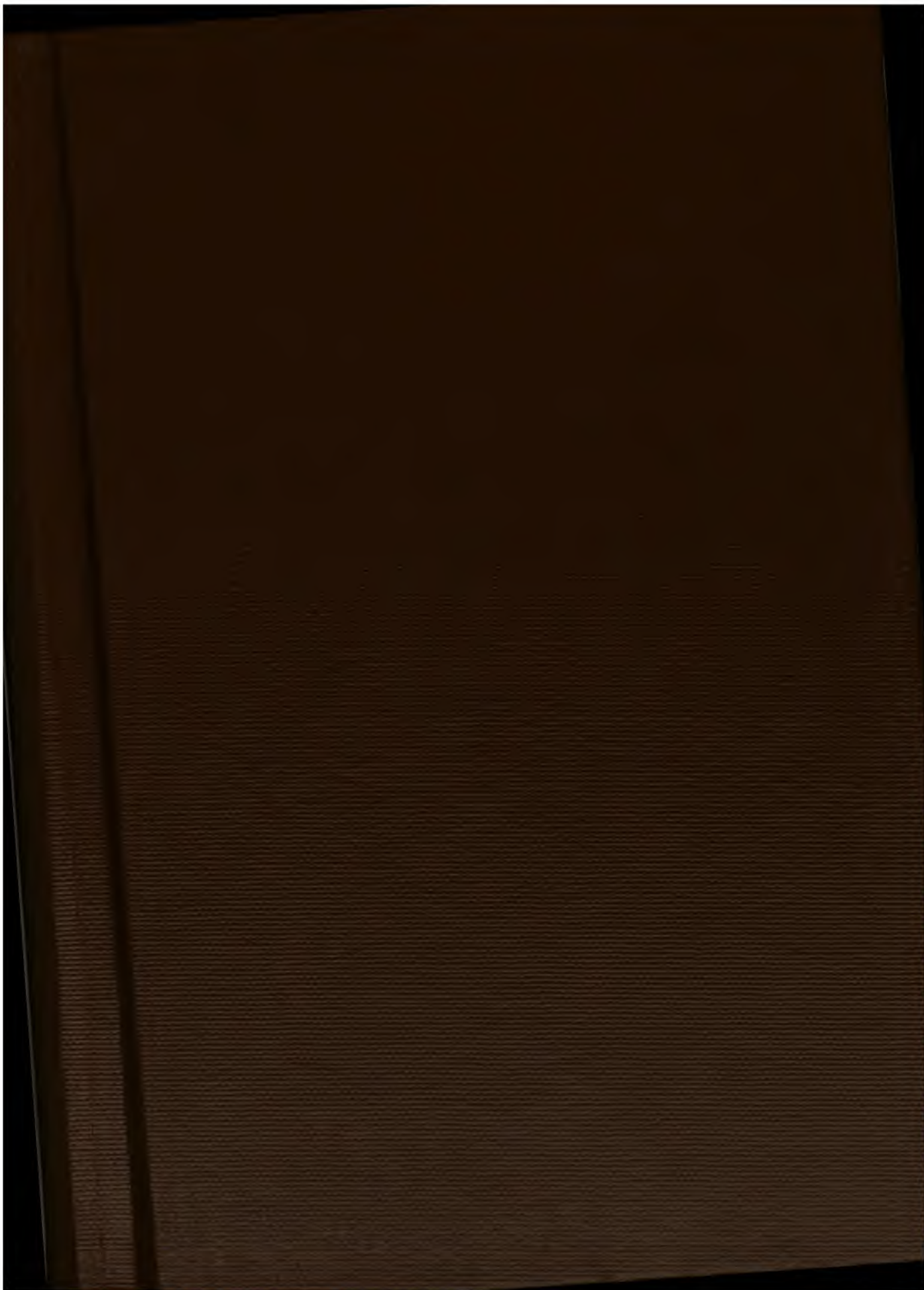
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U. S. Constitutional Convention, 1787.

JOURNAL

OF THE

FEDERAL CONVENTION

KEPT BY

JAMES MADISON

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FRIDAY, JULY 20TH.

In Convention,—The proposed ratio of Electors for appointing the Executive, to wit : one for each State whose inhabitants do not exceed two hundred thousand, &c., being taken up,—

Mr. MADISON observed that this would make, in time, all or nearly all the States equal, since there were few that would not in time contain the number of inhabitants entitling them to three Electors ; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

Mr. GERRY moved that *in the first instance* the Electors should be allotted to the States in the following ratio : to New Hampshire, one ; Massachusetts, three ; Rhode Island, one ; Connecticut two ; New York, two ; New Jersey, two ; Pennsylvania, three ; Delaware, one ; Maryland, two ; Virginia, three ; North Carolina, two ; South Carolina, two ; Georgia, one.

On the question to postpone in order to take up this motion of Mr. GERRY, it passed in the affirmative,—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—6 ; Connecticut, New Jersey, Delaware, Maryland, no—4.

Mr. ELLSWORTH moved that two Electors be allotted to New Hampshire. Some rule ought to be pursued ; and New Hampshire has more than a hundred thousand inhabitants. He thought it would be proper also to allot two to Georgia.

Mr. BROOM and Mr. MARTIN moved to postpone Mr. GERRY's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

On this motion, —New Jersey, Delaware, Maryland, aye, —3 ; Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—7.

Mr. HOUSTON seconded the motion of Mr. ELLSWORTH to add another Elector to New Hampshire and Georgia.

On the question, — Connecticut, South Carolina, Georgia, aye — 3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 7.

Mr. WILLIAMSON moved as an amendment to Mr. GERRY's allotment of Electors, in the first instance, that in future elections of the National Executive the number of Electors to be appointed by the several States shall be regulated by their respective numbers of representatives in the first branch, pursuing as nearly as may be, the present proportions.

On the question on Mr. GERRY's ratio of Electors, — Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, aye — 6; New Jersey, Delaware, Maryland, Georgia, no — 4.

On the clause, "to be removable on impeachment and conviction for malpractice or neglect of duty," (see the ninth Resolution),—

Mr. PINCKNEY and Mr. GOUVERNEUR MORRIS moved to strike out this part of the Resolution. Mr. PINCKNEY observed, he ought not to be impeachable whilst in office.

Mr. DAVIE. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

Mr. WILSON concurred in the necessity of making the Executive impeachable whilst in office.

Mr. GOUVERNEUR MORRIS. He could do no criminal act without coadjutors, who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides, who is to impeach? Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement; and will render the Executive dependent on those who are to impeach.

Colonel MASON. No point is of more importance than

that the right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice? When great crimes were committed, he was for punishing the principal as well as the coadjutors. There had been much debate and difficulty as to the mode of choosing the Executive. He approved of that which had been adopted at first, namely, of referring the appointment to the National Legislature. One objection against Electors was the danger of their being corrupted by the candidates, and this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

Doctor FRANKLIN was for retaining the clause as favourable to the Executive. History furnishes one example only of a First Magistrate being formally brought to public justice. Every body cried out against this as unconstitutional. What was the practice before this, in cases where the Chief Magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the Executive, where his misconduct should deserve it, and for his honorable acquittal, where he should be unjustly accused.

Mr. GOUVERNEUR MORRIS admits corruption, and some few other offences, to be such as ought to be impeachable; but thought the cases ought to be enumerated and defined.

Mr. MADISON thought it indispensable that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the Chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his

trust to foreign powers. The case of the Executive magistracy was very distinguishable from that of the Legislature, or any other public body, holding offices of limited duration. It could not be presumed that all, or even the majority, of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides, the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the Executive magistracy, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. PINCKNEY did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature, who would in that case hold them as a rod over the Executive, and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. GERBY urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

Mr. KING expressed his apprehensions that an extreme caution in favor of liberty, might enervate the government we were forming. He wished the House to recur to the primitive axiom, that the three great departments of government should be separate and independent; that the Executive and Judiciary should be so as well as the Legislative; that the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said, that the Judiciary would be impeachable. But it should have been remembered, at the same time, that the Judiciary hold their places not for a

limited time, but during good behaviour. It is necessary, therefore, that a form should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Executive was to hold his place for a limited time, like the members of the Legislature. Like them, particularly the Senate, whose members would continue in appointment the same term of six years, he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them, therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good behaviour, a tenure which would be most agreeable to him, provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence, and of the principles of the Constitution. He relied on the vigor of the Executive, as a great security for the public liberties.

MR. RANDOLPH. The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war, when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Colonel HAMILTON), of composing a forum out of the Judges belonging to the States; and even of requiring some preliminary inquest, whether just ground of impeachment existed.

Doctor FRANKLIN mentioned the case of the Prince of Orange, during the late war. An arrangement was made between France and Holland, by which their two fleets were

to unite at a certain time and place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Stadtholder was at the bottom of the matter. This suspicion prevailed more and more. Yet as he could not be impeached, and no regular examination took place, he remained in his office; and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities and contentions. Had he been impeachable, a regular and peaceable inquiry would have taken place, and he would, if guilty, have been duly punished,—if innocent, restored to the confidence of the public.

Mr. KING remarked, that the case of the Stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former case, impeachments are proper to secure good behaviour. In the latter, they are unnecessary; the periodical responsibility to the Electors being an equivalent security.

Mr. WILSON observed, that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment and removal.

Mr. PINCKNEY apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him. He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. GOUVERNEUR MORRIS's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a magistrate having a life interest, much less, like one having an hereditary interest, in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the First Magistrate in foreign pay, without being able to guard against it by displacing him.

One would think the King of England well secured against bribery. He has, as it were, a fee simple in the whole Kingdom. Yet Charles II. was bribed by Louis XIV. The Executive ought, therefore, to be impeachable for treachery. Corrupting his Electors, and incapacity, were other causes of impeachment. For the latter he should be punished, not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King, but the prime minister. The people are the King. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the Legislature.

It was moved and seconded to postpone the question of impeachments, &c. ? which was negatived,—Massachusetts and South Carolina, only, being aye.

On the question, Shall the Executive be removable on impeachments, &c. ?—Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Massachusetts, South Carolina, no—2.

“The Executive to receive fixed compensation,”—agreed to, *nem. con.*

“To be paid out of the National Treasury,”—agreed to, New Jersey only in the negative.

Mr. GERRY and Mr. GOUVERNEUR MORRIS moved, “that the Electors of the Executive shall not be members of the National Legislature, nor officers of the United States, nor shall the Electors themselves be eligible to the supreme magistracy.” Agreed to, *nem. con.*

Doctor McCLURG asked, whether it would not be necessary, before a committee for detailing the Constitution should be appointed, to determine on the means by which the Executive is to carry the laws into effect, and to resist combinations against them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand, the Committee will have no determinate directions on this great point.

Mr. WILSON thought that some additional directions to the Committee would be necessary.

Mr. KING. The Committee are to provide for the end. Their discretionary power to provide for the means is involved, according to an established axiom.

Adjourned.

SATURDAY, JULY 21ST.

In Convention,—Mr. WILLIAMSON moved, “that the Electors of the Executive should be paid out of the National Treasury for the service to be performed by them.” Justice required this, as it was a national service they were to render. The motion was agreed to, *nem. con.*

Mr. WILSON moved, as an amendment to the tenth Resolution, “that the Supreme National Judiciary should be associated with the Executive in the revisionary power.” This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort. The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said, that the Judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the Legislature.—Mr. MADISON seconded the motion.

Mr. GORHAM did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy

of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on the Judges for their opinions.

Mr. ELLSWORTH approved heartily of the motion. The aid of the Judges will give more wisdom and firmness to the Executive. They will possess a systematic and accurate knowledge of the laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary Department by giving it an additional opportunity of defending itself against Legislative encroachments. It would be useful to the Executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the Legislature, by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws, qualities peculiarly necessary, and yet shamefully wanting in our Republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength, either to the Executive, or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended, that, notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; and

suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

Mr. MASON said, he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the revisionary power would be of little avail.

Mr. GERRY did not expect to see this point, which had undergone full discussion, again revived. The object he conceived of the revisionary power was merely to secure the Executive department against Legislative encroachment. The Executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defence of them. The motion was liable to strong objections. It was combining and mixing together the Legislative and the other departments. It was establishing an improper coalition between the Executive and Judiciary departments. It was making statesmen of the Judges, and setting them up as the guardians of the rights of the people. He relied, for his part, on the Representatives of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the Legislature.

Mr. STRONG thought, with Mr. GERRY, that the power of making, ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in passing the laws.

Mr. GOUVERNEUR MORRIS. Some check being necessary on the Legislature, the question is, in what hands it should be lodged? On one side, it was contended, that the Executive alone ought to exercise it. He did not think that an Executive appointed for six years, and impeachable whilst in office, would be a very effectual check. On the other

side, it was urged, that he ought to be reinforced by the Judiciary department. Against this it was objected, that expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was, that the Judges in England had a great share in the legislation. They are consulted in difficult and doubtful cases. They may be, and some of them are, members of the Legislature. They are, or may be, members of the Privy Council; and can there advise the Executive, as they will do with us if the motion succeeds. The influence the English Judges may have, in the latter capacity, in strengthening the Executive check, cannot be ascertained, as the King, by his influence, in a manner dictates the laws. There is one difference in the two cases, however, which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives, and such power for means of defending them, that he will never yield any part of them. The interest of our Executive is so inconsiderable and so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting encroachments. He was extremely apprehensive that the auxiliary firmness and weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations, than from any other source. It had been said that the Legislature ought to be relied on, as the proper guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed, or not. On the latter supposition, no check will be wanted. On the former, a strong check will be necessary. And this is the proper supposition. Emissions of paper-money, largesses to the people, a remission of debts, and similar measures, will at some times be popular, and will be pushed for that reason. At other times, such measures will coincide with the

interests of the Legislature themselves, and that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil ; yet it is found to be unable to prevent it altogether.

Mr. L. MARTIN considered the association of the Judges with the Executive, as a dangerous innovation; as well as one that could not produce the particular advantage expected from it. A knowledge of mankind, and of Legislative affairs, cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the constitutionality of laws, that point will come before the Judges in their official character. In this character they have a negative on the laws. Join them with the Executive in the revision, and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the Legislature. Besides, in what mode and proportion are they to vote in the Council of Revision?

Mr. MADISON could not discover in the proposed association of the Judges with the Executive, in the revisionary check on the Legislature, any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary, he thought it an auxiliary precaution, in favor of the maxim. If a constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead, therefore, of contenting ourselves with laying down the theory in the Constitution, that each department ought to be separate and distinct, it was proposed to add a defensive power to each, which should maintain the theory in

practice. In so doing, we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the Legislature, and in the Executive Councils, and submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which had been universally regarded as calculated for the preservation of the whole. The objection against a union of the Judiciary and Executive branches, in the revision of the laws, had either no foundation, or was not carried far enough. If such a union was an improper mixture of powers, or such a Judiciary check on the laws was inconsistent with the theory of a free constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Colonel MASON observed, that the defence of the Executive was not the sole object of the revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect, not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed. It has been said (by Mr. L. MARTIN), that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply, that in this capacity they could impede, in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law, however unjust, oppressive or pernicious, that did not come plainly under this description, they would be under the necessity,

as Judges, to give it a free course. He wished the further use to be made of the Judges of giving aid in preventing every improper law. Their aid will be the more valuable, as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

Mr. WILSON. The separation of the departments does not require that they should have separate objects; but that they should act separately, though on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. GERRY had rather give the Executive an absolute negative for its own defence, than thus to blend together the Judiciary and Executive departments. It will bind them together in an offensive and defensive alliance against the Legislature, and render the latter unwilling to enter into a contest with them.

Mr. GOUVERNEUR MORRIS was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter, after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that, as a security against legislative acts of the former, which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence; or at least to have an opportunity of stating their objections against acts of encroachment? And would any one pretend, that such a right tended to blend and confound powers that ought to be separately exercised? As well might it be said that if three neighbours had three distinct farms, a right in each to defend his farm against his neighbours, tended to blend the farms together.

Mr. GORHAM. All agree that a check on the Legislature is necessary. But there are two objections against admitting the Judges to share in it, which no observations on the other side seem to obviate. The first is, that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that, as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and, instead of enabling him to defend himself, would enable the Judges to sacrifice him.

Mr. WILSON. The proposition is certainly not liable to all the objections which have been urged against it. According to Mr. GERRY, it will unite the Executive and Judiciary in an offensive and defensive alliance against the Legislature. According to Mr. GORHAM, it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two Departments was necessary to balance the single weight of the Legislature. To the first objection stated by the other gentleman it might be answered, that, supposing the prepossession to mix itself with the exposition, the evil would be over-balanced by the advantages promised by the expedient. To the second objection, that such a rule of voting might be provided, in the detail, as would guard against it.

Mr. BUTLEDGE thought the Judges of all men the most unfit to be concerned in the Revisionary Council. The Judges ought never to give their opinion on a law, till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of state, as of War, Finance, &c., and avail himself of their information and opinions.

On the question on Mr. WILSON's motion for joining the Judiciary in the revision of laws, it passed in the negative,— Connecticut, Maryland, Virginia, aye — 3; Massachusetts, Delaware, North Carolina, South Carolina, no — 4; Pennsylvania, Georgia, divided; New Jersey, not present.

The tenth Resolution, giving the Executive a qualified vote, requiring two-thirds of each branch of the Legislature to overrule it, was then agreed to, *nem. con.*

The motion made by Mr. MADISON, on the eighteenth of July, and then postponed, "that the Judges should be nominated by the Executive, and such nominations become appointments unless disagreed to by two-thirds of the second branch of the Legislature," was now resumed

Mr. MADISON stated as his reasons for the motion: first, that it secured the responsibility of the Executive, who would in general be more capable and likely to select fit characters than the Legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment. Secondly, that in case of any flagrant partiality or error in the nomination, it might be fairly presumed that two-thirds of the second branch would join in putting a negative on it. Thirdly, that as the second branch was very differently constituted, when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that there should be a concurrence of two authorities, in one of which the people, in the other the States, should be represented. The executive magistrate would be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the Judges might be appointed by a minority of the people, though by a majority of the States; which could not be justified on any principle, as their proceedings were to relate to the people rather than to the States; and as it would, moreover, throw the appointments entirely into the hands of the Northern States, a perpetual ground of jealousy and discontent would be furnished to the Southern States.

Mr. PINCKNEY was for placing the appointment in the second branch exclusively. The Executive will possess

neither the requisite knowledge of characters, nor confidence of the people, for so high a trust.

Mr. RANDOLPH would have preferred the mode of appointment proposed formerly by Mr. GORHAM, as adopted in the Constitution of Massachusetts, but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the Executive, as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail, if the appointments be referred to either branch of the Legislature, or to any other authority administered by a number of individuals.

Mr. ELLSWORTH would prefer a negative in the Executive on a nomination by the second branch, the negative to be overruled by a concurrence of two-thirds of the second branch, to the mode proposed by the motion, but preferred an absolute appointment by the second branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses and intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

Mr. GOUVERNEUR MORRIS supported the motion. First, the States, in their corporate capacity, will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote, the Judges ought not to be appointed by the Senate. Next to the impropriety of being judge in one's own cause, is the appointment of the Judge. Secondly, it had been said, the Executive would be uninformed of characters. The reverse was the truth. The Senate will be so. They must take the character of candi-

dates from the flattering pictures drawn by their friends. The Executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the Executive. If the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case. He added, that if the objections against an appointment of the Executive by the Legislature had the weight that had been allowed, there must be some weight in the objection to an appointment of the Judges by the Legislature, or by any part of it.

Mr. GEBBY. The appointment of the Judges, like every other part of the Constitution, should be so modeled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him, also, a strong objection, that two-thirds of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress, and the appointments of Congress have been generally good.

Mr. MADISON observed, that he was not anxious that two-thirds should be necessary, to disagree to a nomination. He had given this form to his motion, chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. MASON found it his duty to differ from his colleagues in their opinions and reasonings on this subject. Notwithstanding the form of the proposition, by which the appointment seemed to be divided between the Executive and the Senate, the appointment was substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the

first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary Department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate, and require some precautions in the case of regulating navigation, commerce and imposts; but he could not see that it had any connection with the Judiciary department.

On the question, the motion being now, "that the Executive should nominate, and such nominations should become appointments unless disagreed to by the Senate," Massachusetts, Pennsylvania, Virginia, aye — 3; Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, no — 6.

On the question for agreeing to the clause as it stands, by which the Judges are to be appointed by the second branch, — Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye — 6; Massachusetts, Pennsylvania, Virginia, no — 3; so it passed in the affirmative.

Adjourned.

MONDAY, JUNE 23D.

In Convention, — Mr. JOHN LANGDON and Mr. NICHOLAS GILLMAN, from New Hampshire, took their seats.

The seventeenth Resolution, that provision ought to be made for future amendments of the Articles of the Union, was agreed to, *nem. con.*

The eighteenth Resolution, requiring the Legislative, Executive and Judiciary of the States to be bound by oath to support the Articles of Union, was taken into consideration.

Mr. WILLIAMSON suggests, that a reciprocal oath should be required from the National officers, to support the Governments of the States.

Mr. GERRY moved to insert, as an amendment, that the oath of the officers of the National Government also should extend to the support of the National Government, which was agreed to, *nem. con.*

Mr. WILSON said, he was never fond of oaths, considering them as a left-handed security only. A good government did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing government, in case future alterations should be necessary; and prove an obstacle to the seventeenth Resolution, just agreed to.

Mr. GORHAM did not know that oaths would be of much use; but could see no inconsistency between them and the seventeenth Resolution, or any regular amendment of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr. GERRY thought, with Mr. GORHAM, there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side, he thought one good effect would be produced by it. Hitherto the officers of the two Governments had considered them as distinct from, and not as parts of, the general system, and had, in all cases of interference given a preference to the State Governments. The proposed oath will cure that error.

The Resolution (the eighteenth) was agreed to, *nem. con.*

The nineteenth Resolution, referring the new Constitution to Assemblies to be chosen by the people, for the express purpose of ratifying it, was next taken into consideration.

Mr. ELLSWORTH moved that it be referred to the Legislatures of the States for ratification. Mr. PATTERSON seconded the motion.

Colonel MASON considered a reference of the plan to the authority of the people, as one of the most important and essential of the Resolutions. The Legislatures have no

power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions—he knew there was no power in some of them—that could be competent to this object. Whither, then, must we resort? To the people, with whom all power remains that has not been given up in the constitutions derived from them. It was of great moment, he observed, that this doctrine should be cherished, as the basis of free government. Another strong reason was, that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures, having equal authority, could undo the acts of their predecessors; and the National Government would stand in each State on the weak and tottering foundation of an act of Assembly. There was a remaining consideration, of some weight. In some of the States, the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the Constitution as established by an assumed authority. A National Constitution derived from such a source would be exposed to the severest criticisms.

Mr. RANDOLPH. One idea has pervaded all our proceedings, to wit, that opposition as well from the States as from individuals, will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext, by the mode of ratifying it? Added to other objections against a ratification by the Legislative authority only, it may be remarked, that there have been instances in which the authority of the common law has been set up in particular States against that of the Confederation, which has had no higher sanction than Legislative ratification. Whose opposition will be most likely to be excited against the system? That of the local demagogues who will be degraded by it, from the importance they now hold. These will spare no efforts to impede that progress

in the popular mind, which will be necessary to the adoption of the plan ; and which every member will find to have taken place in his own, if he will compare his present opinions with those he brought with him into the Convention. It is of great importance, therefore, that the consideration of this subject should be transferred from the Legislatures, where this class of men have their full influence, to a field in which their efforts can be less mischievous. It is moreover worthy of consideration, that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon, to refer the question to the people.

Mr. GERRY. The arguments of Colonel MASON and Mr. RANDOLPH prove too much. They prove an unconstitutionality in the present Federal system, and even in some of the State Governments. Inferences drawn from such a source must be inadmissible. Both the State Governments and the Federal Government have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The last Article of it, authorizing alterations, must consequently be so as well as the others; and every thing done in pursuance of the article, must have the same high authority with the article. Great confusion, he was confident, would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose, that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

Mr. GORHAM was against referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose will discuss the subject more candidly than members of the Legislature, who are to lose the power which is to be given up to the General Government. 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult, in these cases, to get the plan through the Legislatures, than through a Convention.

3. In the States many of the ablest men are excluded from the Legislatures, but may be elected into a Convention. Among these may be ranked many of the clergy, who are generally friends to good government. Their services were found to be valuable in the formation and establishment of the Constitution of Massachusetts. 4. The Legislatures will be interrupted with a variety of little business; by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether, the national system. 5. If the last Article of the confederation is to be pursued, the unanimous concurrence of the States will be necessary. But will any one say that all the States are to suffer themselves to be ruined, if Rhode Island should persist in her opposition to general measures? Some other States might also tread in her steps. The present advantage, which New York seems to be so much attached to, of taxing her neighbours by the regulation of her trade, makes it very probable that she will be of the number. It would, therefore, deserve serious consideration, whether provision ought not to be made for giving effect to the system, without waiting for the unanimous concurrence of the States.

Mr. ELLSWORTH. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as would be competent. He thought more was to be expected from the Legislatures, than from the people. The prevailing wish of the people in the Eastern States is, to get rid of the public debt; and the idea of strengthening the National Government carries with it that of strengthening the public debt. It was said by Colonel MASON,—in the first place, that the Legislatures have no authority in this case; and in the second, that their successors, having equal authority, could rescind their acts. As to the second point he could not admit it to be well founded. An act to which the States, by their Legislatures, make themselves parties, becomes a compact from which no

one of the parties can recede of itself. As to the first point, he observed that a new set of ideas seemed to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the Legislatures, not to the people. The fact is, that we exist at present, and we need not inquire how, as a federal society, united by a charter, one article of which is, that alterations therein may be made by the Legislative authority of the States. It has been said, that if the Confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer, that if such were the urgency and necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be equally valid, in favor of a partial compact, founded on the consent of the Legislatures.

Mr. WILLIAMSON thought the Resolution (the nineteenth) so expressed, as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought, too, that Conventions were to be preferred, as more likely to be composed of the ablest men in the States.

Mr. GOUVERNEUR MORRIS considered the inference of Mr. ELLSWORTH from the plea of necessity, as applied to the establishment of a new system, on the consent of the people of a part of the States, in favor of a like establishment, on the consent of a part of the Legislatures, as a *non-sequitur*. If the Confederation is to be pursued, no alteration can be made without the unanimous consent of the Legislatures. Legislative alterations not conformable to the Federal compact would clearly not be valid. The Judges would consider them as null and void. Whereas,

in case of an appeal to the people of the United States, the supreme authority, the Federal compact may be altered by a *majority of them*, in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendment moved by Mr. ELLSWORTH erroneously supposes, that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr. KING thought with Mr. ELLSWORTH that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation being equivalent to a formal ratification by the people. He thought with Mr. ELLSWORTH, also, that the plea of necessity was as valid in the one case, as the other. At the same time, he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes and doubts concerning the legitimacy of the new Constitution, as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections, made in the State of New York to granting powers to Congress, one had been, that such powers as would operate within the States could not be reconciled to the Constitution, and therefore were not grantable by the Legislative authority. He considered it as of some consequence, also, to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support and maintain the existing Constitutions.

Mr. MADISON thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions; and it would be a novel and dangerous doctrine, that a Legislature could change the Constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given a power to the Legislature to concur in alterations of the Federal compact. But there were certainly some which had not; and

in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league or treaty*, and a *Constitution*. The former, in point of *moral obligation*, might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. First, a law violating a treaty ratified by a pre-existing law might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a Constitution established by the people themselves, would be considered by the Judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes, in point of expediency, he thought all the considerations which recommended this Convention, in preference to Congress, for proposing the reform, were in favor of State Conventions, in preference to the Legislatures for examining and adopting it.

On the question on Mr. ELLSWORTH'S motion to refer the plan to the Legislatures of the States, — Connecticut, Delaware, Maryland, aye — 3; New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no — 7.

Mr. GOUVERNEUR MORRIS moved, that the reference of the plan be made to one General Convention, chosen and authorized by the people, to consider, *amend*, and establish the same. Not seconded.

On the question for agreeing to the nineteenth Resolution, touching the mode of ratification as reported from the Committee of the Whole, viz., to refer the Constitution, after the approbation of Congress, to assemblies chosen by the people, — New Hampshire, Massachusetts, Connecticut,

Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Delaware, no — 1.

Mr. GOUVERNEUR MORRIS and Mr. KING moved, that the representation in the second branch consist of — members from each State, who shall vote *per capita*.

Mr. ELLSWORTH said he had always approved of voting in that mode.

Mr. GOUVERNEUR MORRIS moved to fill the blank with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum, the power would be lodged in fourteen members, which was too small a number for such a trust.

Mr. GORHAM preferred two to three members for the blank. A small number was most convenient for deciding on peace and war, &c., which he expected would be vested in the second branch. The number of States will also increase. Kentucky, Vermont, the Province of Maine and Franklin, will probably soon be added to the present number. He presumed also that some of the largest States would be divided. The strength of the General Government will be, not in the largeness, but the smallness, of the States.

Col. MASON thought *three* from each State, including new States, would make the second branch too numerous. Besides other objections, the additional expense ought always to form one, where it was not absolutely necessary.

Mr. WILLIAMSON. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send and support their ablest citizens. He approved of the voting *per capita*.

On the question for filling the blank with "*three*," — Pennsylvania, aye — 1; New Hampshire, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, no — 8.

On the question for filling it with "*two*," — agreed to, *nem. con.*

Mr. L. MARTIN was opposed to voting *per capita*, as departing from the idea of the *States* being represented in the second branch.

Mr. CARROLL was not struck with any particular objection against the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion, viz.: "the second branch to consist of two members from each State, and to vote *per capita*," — New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Maryland, no — 1.

Mr. HOUSTON and Mr. SPAIGHT moved, "that the appointment of the Executive by Electors chosen by the Legislatures of the States," be reconsidered. Mr. HOUSTON urged the extreme inconveniency and the considerable expense of drawing together men from all the States for the single purpose of electing the chief magistrate.

On the question, which was put without debate, — New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Georgia, aye — 7; Pennsylvania, Maryland, Virginia, no — 3.

Ordered, that tomorrow be assigned for the reconsideration; — Connecticut and Pennsylvania, no; all the rest, aye.

Mr. GERRY moved, that the proceedings of the Convention for the establishment of a National Government (except the part relating to the Executive) be referred to a Committee to prepare and report a Constitution conformable thereto.

General PINCKNEY reminded the Convention, that if the Committee should fail to insert some security to the Southern State against an emancipation of slaves, and taxes on exports, he should be bound by duty to his State to vote against their report.

The appointment of a Committee, as moved by Mr. GERRY, was agreed to, *nem. con.*

On the question, Shall the Committee consist of ten

members, one from each State present?— all the States were *no*, except Delaware, *aye*.

Shall it consist of seven members?— New Hampshire, Massachusetts, Connecticut, Maryland, South Carolina, *aye* — 5; Pennsylvania, Delaware Virginia, North Carolina, Georgia, *no* — 5.

The question being lost by an equal division of votes, it was agreed, *nem. con.*, that the Committee should consist of five members to be appointed tomorrow.

Adjourned.

TUESDAY, JULY 24TH.

In Convention, — The appointment of the Executive by Electors being reconsidered,—

Mr. HOUSTON moved that he be appointed by the National Legislature, instead of "Electors appointed by the State Legislatures," according to the last decision of the mode. He dwelt chiefly on the improbability that capable men would undertake the service of Electors from the more distant States.

Mr. SPAIGHT seconded the motion.

Mr. GERRY opposed it. He thought there was no ground to apprehend the danger urged by Mr. HOUSTON. The election of the Executive Magistrate will be considered as of vast importance, and will create great earnestness. The best men, the Governors of the States, will not hold it derogatory from their character to be the Electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a second time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

Mr. STRONG supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a second time, as new Elections of the Legislature will have intervened; and he will not depend for his second appointment on the same set of men

that his first was received from. It had been suggested that *gratitude* for his past appointment would produce the same effect as dependence for his future appointment. He thought very differently. Besides, this objection would lie against the Electors, who would be objects of gratitude as well as the Legislature. It was of great importance not to make the government too complex, which would be the case if a new set of men, like the Electors, should be introduced into it. He thought, also, that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

Mr. WILLIAMSON was for going back to the original ground, to elect the Executive for seven years, and render him ineligible a second time. The proposed Electors would certainly not be men of the first, nor even of the second, grade in the States. These would all prefer a seat in the Senate, or the other branch of the Legislature. He did not like the unity in the Executive. He had wished the Executive power to be lodged in three men, taken from three districts, into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interest between the Northern and Southern States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the kingdom. Another objection against a single magistrate is, that he will be an elective king, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought, that we should at some time or other have a king; but he wished no precaution to be omitted that might postpone the event as long as possible. Ineligibility a second time appeared to him to be the best precaution. With this precaution he had no objection

to a longer term than seven years. He would go as far as ten or twelve years.

Mr. GERRY moved that the Legislatures of the States should vote by ballot for the Executive, in the same proportions as it had been proposed they should choose Electors; and that in case a majority of the votes should not centre on the same person, the first branch of the National Legislature should choose two out of the four candidates having most votes; and out of these two the second branch should choose the Executive.

Mr. KING seconded the motion; and on the question to postpone, in order to take it into consideration, the *noes* were so predominant, that the States were not counted.

On the question on Mr. HOUSTON'S motion, that the Executive be appointed by the National Legislature,—New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, aye—7; Connecticut, Pennsylvania, Maryland, Virginia, no—4.

Mr. L. MARTIN and Mr. GERRY moved to re-instate the ineligibility of the Executive a second time.

Mr. ELLSWORTH. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be re-elected if his conduct proved him worthy of it. And he will be more likely to render himself worthy of it if he be rewardable with it. The most eminent characters, also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixed period.

Mr. GERRY. That the Executive should be independent of the Legislature, is a clear point. The longer the duration of his appointment, the more will his dependence be diminished. It will be better, then, for him to continue ten, fifteen, or even twenty years, and be ineligible afterwards.

Mr. KING was for making him re-eligible. This is too great an advantage to be given up, for the small effect it

will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

Mr. L. MARTIN, suspended his motion as to the ineligibility, moved, "that the appointment of the Executive shall continue for eleven years."

Mr. GERRY suggested fifteen years.

Mr. KING twenty years.* This is the medium life of princes.

Mr. DAVIE eight years.

Mr. WILSON. The difficulties and perplexities into which the House is thrown, proceed from the election by the Legislature, which he was sorry had been re-instated. The inconvenience of this mode was such, that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance of life a continuance in office would cease to be agreeable to the officer, as well as desirable to the public. Experience had shown in a variety of instances, that both a capacity and inclination for public service existed in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was eighty years of age. The Popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at thirty-five years of age, which he presumes may happen, and his continuance should be fixed at fifteen years, at the age of fifty, in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British jurisprudence have sustained, had the age of fifty been fixed there as the ultimate limit of capacity or readiness to serve the public. The great

* This might possibly be meant as a caricature of the previous motions, in order to defeat the object of them.

luminary Lord Mansfield, held his seat for thirty years after his arrival at that age. Notwithstanding what had been done, he could not but hope that a better mode of election would yet be adopted ; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation, he would move that the present question be postponed till to-morrow.

Mr. BROOM seconded the motion to postpone.

Mr. GERRY. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the Executive to the committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Mr. WILSON. As the great difficulty seems to spring from the mode of election, he would suggest a mode which had not been mentioned. It was, that the Executive be elected for six years by a small number, not more than fifteen of the National Legislature, to be drawn from it, not by ballot, but by lot, and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not, he said, a digested idea, and might be liable to strong objections.

Mr. GOUVERNEUR MORRIS. Of all possible modes of appointment that by Legislature is the worst. If the Legislature is to appoint, and to impeach, or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment, but was now convinced that impeachments must be provided for, if the appointment was to be of any duration. No man would say, that an Executive known to be in the pay of an enemy should not be removable in some way or other. He had been charged heretofore (by Col. MASON), with inconsistency in pleading for confidence in the Legislature on some occasions, and urging a distrust on others. The charge was not well founded. The Legislature is worthy of un-

bounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their constituents, as happens in many of their acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature cannot be too much distrusted. In all public bodies there are two parties. The Executive will necessarily be more connected with one than with the other. There will be a personal interest, therefore, in one of the parties, to oppose, as well as in the other to support, him. Much had been said of the intrigues that will be practised by the Executive to get into office. Nothing had been said on the other side, of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real king, the Minister. This was the way in which Pitt (Lord Chatham) forced himself into place. Fox was for pushing the matter still further. If he had carried his India bill, which he was very near doing, he would have made the Minister the king in form almost, as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something has been said of the danger of monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the Executive upon the Legislature, the expedient of making him ineligible a second time had been devised. This was as much as to say, we should give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a second time — and prolong his duration even to fifteen years — will he, by any wonderful interposition of Providence at that period, cease to be a man? No; he will be unwilling to quit his exaltation; the road

to his object through the Constitution will be shut ; he will be in possession of the sword ; a civil war will ensue, and the commander of the victorious army, on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system, be curable. It is the most difficult of all, rightly to balance the Executive. Make him too weak — the Legislature will usurp his power. Make him too strong — he will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan. It ought to do so. He should himself be afraid to trust it. He was not prepared to decide on Mr. WILSON's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance should decide than intrigue.

On the question to postpone the consideration of the resolution on the subject of the Executive,— Connecticut, Pennsylvania, Maryland, Virginia, aye — 4; New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no — 6; Delaware, divided.

Mr. WILSON then moved, that the Executive be chosen every —— years by —— Electors, to be taken by lot from the National Legislature, who shall proceed immediately to the choice of the Executive, and not separate until it be made.

Mr. CARROLL seconds the motion.

Mr. GERRY. This is committing too much to chance. If the lot should fall on a set of unworthy men, an unworthy Executive must be saddled on the country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

Mr. KING. The lot might fall on a majority from the same State, which would ensure the election of a man from that State. We ought to be governed by reason, not by

chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

Mr. WILSON did not move this as the best mode. His opinion remained unshaken, that we ought to resort to the people for the election. He seconded the postponement.

Mr. GOUVERNEUR MORRIS observed, that the chances were almost infinite against a majority of Electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative,—ayes, 7; noes, 4.

On the question of postponement, it was agreed to, *nem. con.*

Mr. CARROLL took occasion to observe, that he considered the clause declaring that direct taxation on the States should be in proportion to representation, previous to the obtaining an actual census, as very objectionable; and that he reserved to himself the right of opposing it, if the report of the Committee of detail should leave it in the plan.

Mr. GOUVERNEUR MORRIS hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge* to assist us over a certain gulf; having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

On a ballot for a committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were:—

Mr. RUTLEDGE, Mr. RANDOLPH, Mr. GOBHAM, Mr. ELLSWORTH, Mr. WILSON.

On motion to discharge the Committee of the Whole from the propositions submitted to the Convention by Mr. C. PINCKNEY as the basis of a Constitution, and to refer

* The object was to lessen the eagerness, on one side, for, and the opposition, on the other, to the share of representation claimed by the Southern States on account of the negroes.

them to the Committee of Detail just appointed, it was agreed to, *nem. con.*

A like motion was then made and agreed to, *nem. con.*, with respect to the propositions of Mr. PATTERSON.

Adjourned.

WEDNESDAY, JULY 25TH.

In Convention,—The clause relating to the Executive being again under consideration,—

Mr. ELLSWORTH moved, “that the Executive be appointed by the Legislature, except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, and be re-eligible; in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose.” By this means a deserving magistrate may be re-elected without *making him dependent on the Legislature*.

Mr. GERRY repeated his remark, that an election at all by the National Legislature was radically and incurably wrong; and moved, “that the Executive be appointed by the Governors and Presidents of the States, with advice of their Councils, and where there are no Councils, by Electors chosen by the Legislatures. The Executives to vote in the following proportions, viz: —.”

Mr. MADISON. There are objections against every mode that has been, or perhaps can be, proposed. The election must be made, either by some existing authority under the National or State Constitutions, — or by some special authority derived from the people, — or by the people themselves. The two existing authorities under the National Constitution would be the Legislative and Judiciary. The latter he presumed was out of the question. The former was, in his judgment, liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, in the first place, the election of the chief magistrate would agitate and divide the Legislature

so much, that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the Legislature; would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have, and would make use of, the opportunity to mix their intrigues and influence with the election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our government a man attached to their respective politics and interests. No pains, nor perhaps expense, will be spared, to gain from the Legislature an appointment favourable to their wishes. Germany and Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, although the elective magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive and Judiciary. The appointment of the National Executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the National Legislature was to control this propensity. One object of the National Executive, so far as it would have a negative on the laws, was to control the National Legislature, so far as it might be infected with a similar propensity. Refer the appointment of the National Executive to the State Legislatures, and this controlling purpose may be defeated. The Legisla-

tures can and will act with some kind of regular plan, and will promote the appointment of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures, at the time of election, have the same object, or different objects of the same kind, the National Executive would be rendered subservient to them. An appointment by the State Executives was liable, among other objections, to this insuperable one, that being standing bodies, they could and would be courted, and intrigued with by the candidates, by their partizans, and by the ministers of foreign powers. The State Judiciaries had not been, and he presumed would not be, proposed as a proper source of appointment. The option before us, then, lay between an appointment by Electors chosen by the people, and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged against it, and greatly preferable to an appointment by the National Legislature. As the Electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption: as a further precaution, it might be required that they should meet at some place distinct from the seat of government; and even that no person within a certain distance of the place at the time, should be eligible. This mode, however, had been rejected so recently, and by so great a majority, that it probably would not be proposed anew. The remaining mode was an election by the people, or rather by the qualified part of them at large. With all its imperfections, he liked this best. He would not repeat either the general arguments for, or the objections against, this mode. He would only take notice of two difficulties, which he admitted to have weight. The first arose from the disposition in the people to prefer a citizen of their own State, and the disadvantage this would throw on the smaller States. Great as this objection might be, he did not think it equal to such as lay against every other mode which had been proposed. He thought,

too, that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the Northern and Southern States, and the disadvantages which this mode would throw on the latter. The answer to this objection was—in the first place, that this disproportion would be continually decreasing under the influence of the republican laws introduced in the Southern States, and the more rapid increase of their population; in the second place, that local considerations must give way to the general interest. As an individual from the Southern States, he was willing to make the sacrifice.

Mr. ELLSWORTH. The objection drawn from the different sizes of the States is unanswerable. The citizens of the largest States would invariably prefer the candidate within the State; and the largest States would invariably have the man.

On the question on Mr. ELLSWORTH'S motion, as above, — New Hampshire, Connecticut, Pennsylvania, Maryland, aye — 4; Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, no — 7.

Mr. PINCKNEY moved, "that the election by the Legislature be qualified with a proviso, that no person be eligible for more than six years in any twelve years." He thought this would have all the advantage, and at the same time avoid in some degree the inconvenience, of an absolute ineligibility a second time.

Col. MASON approved the idea. It had the sanction of experience in the instance of Congress, and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election; and opened the way, at the same time, for the advantage of his future services. He preferred on the whole the election by the National Legislature; though candor obliged him to admit, that there was great danger of foreign influence, as had been suggested. This was the most serious objection, with him, that had been urged.

Mr. BUTLER. The two great evils to be avoided are, cabal at home, and influence from abroad. It will be difficult to avoid either, if the election be made by the National Legislature. On the other hand the Government should not be made so complex and unwieldy as to disgust the States. This would be the case if the election should be referred to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was against a re-eligibility at all events. He was also against a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive, as in that of the Legislature.

Mr. GERRY approved of Mr. PINCKNEY'S motion, as lessening the evil.

Mr. GOUVERNEUR MORRIS was against a rotation in every case. It formed a political school, in which we were always governed by the scholars, and not by the masters. The evils to be guarded against in this case are,—first, the undue influence of the Legislature; secondly, instability of councils; thirdly, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of councils. To avoid Scylla we fall into Charybdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pennsylvania. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Secondly, the rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life, will be no obstacle. Such is the nature of man—formed by his benevolent Author, no doubt, for wise ends—that although he knows his existence to be limited to a span, he takes his measures as if he were to live forever. But taking another supposition, the inefficacy of the expedient will

be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. Finally, to avoid the third evil, impeachments will be essential; and hence an additional reason against an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of Mr. WILSON, of introducing a mixture of lot. It will diminish, if not destroy, both cabal and dependence.

Mr. WILLIAMSON was sensible that strong objections lay against an election of the Executive by the Legislature, and that it opened a door for foreign influence. The principal objection against an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for three candidates; one of them, he observed, would be probably of his own State, the other two of some other States; and as probably of a small as a large one.

Mr. GOUVERNEUR MORRIS liked the idea; suggesting as an amendment, that each man should vote for two persons, one of whom at least should not be of his own State.

Mr. MADISON also thought something valuable might be made of the suggestion, with the proposed amendment of it. The second best man in this case would probably be the first in fact. The only objection which occurred was, that each citizen, after having given his vote for his favorite fellow citizen, would throw away his second on some obscure citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the citizens of many States would be so sanguine of having

their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might, moreover, be provided, in favor of the smaller States, that the Executive should not be eligible more than — times in — years from the same State.

Mr. GERRY. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union, and acting in concert, to delude them into any appointment. He observed that such a society of men existed in the Order of the Cincinnati. They are respectable, united and influential. They will, in fact, elect the Chief Magistrate in every instance, if the election be referred to the people. His respect for the characters composing this Society, could not blind him to the danger and impropriety of throwing such a power into their hands.

Mr. DICKINSON. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay against an election of the Executive by the National Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people, which he regarded as the best and purest source. Objections he was aware lay against this mode, but not so great, he thought, as against the other modes. The greatest difficulty, in the opinion of the House, seemed to arise from the partiality of the States to their respective citizens. But might not this very partiality be turned to a useful purpose? Let the people of each State choose its best citizen. The people will know the most eminent characters of their own States; and the people of different States will feel an emulation in selecting those of whom they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the National Legislature, or by Electors appointed by it.

On a question which was moved, for postponing Mr. PINCKNEY'S motion, in order to make way for some such

proposition as had been hinted by Mr. WILLIAMSON and others, it passed in the negative, — Connecticut, New Jersey, Pennsylvania, Maryland, Virginia aye — 5; New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia, no — 6.

On Mr. PINCKNEY's motion, that no person shall serve in the Executive more than six years in twelve years, it passed in the negative, — New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, — 5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no — 6.

On a motion that the members of the Committee be furnished with copies of the proceedings, it was so determined, South Carolina alone being in the negative.

It was then moved, that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative, — Connecticut, New Jersey, Delaware, Virginia, North Carolina, aye — 5; New Hampshire, Massachusetts, Pennsylvania, Maryland, South Carolina, Georgia, no — 6.

Mr. GERRY and Mr. BUTLER moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Committee of detail.

Mr. WILSON hoped that so important a branch of the system would not be committed, until a general principle should be fixed by a vote of the House.

Mr. LANGDON was for the commitment.

Adjourned.

THURSDAY, JULY 26TH.

In Convention, — Mr. MASON. In every stage of the question relative to the Executive, the difficulty of the subject and the diversity of the opinions concerning it, have appeared. Nor have any of the modes of constituting that Department been satisfactory. First, it has been proposed that the election should be made by the people at large;

that is, that an act which ought to be performed by those who know most of eminent characters and qualifications, should be performed by those who know least; secondly, that the election should be made by the Legislatures of the States; thirdly, by the Executives of the States. Against these modes, also, strong objections have been urged. Fourthly, it has been proposed that the election should be made by Electors chosen by the people for that purpose. This was at first agreed to; but on further consideration has been rejected. Fifthly, since which, the mode of Mr. WILLIAMSON, requiring each freeholder to vote for several candidates, has been proposed. This seemed, like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as Mr. GERRY has observed, would throw the appointment into the hands of the Cincinnati, a society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the government. Sixthly, another expedient was proposed by Mr. DICKINSON, which is liable to so palpable and material an inconvenience, that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own State; though the causes of his local unpopularity might be of such a nature, as to recommend him to the states at large. Seventhly, among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will probably not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the National Legislature, as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived, at the same time, that a second election ought to be absolutely prohibited. Having for his primary object — for the polar star of his political conduct — the preservation of the rights of the people, he held it as an essential point, as the very palladium

of civil liberty, that the great officers of state, and particularly the Executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are again to be personally valuable to them. He concluded with moving, that the constitution of the Executive, as reported by the Committee of the Whole, be reinstated, viz. "that the Executive be appointed for seven years, and be ineligible a second time."

Mr. DAVIE seconded the motion.

Doctor FRANKLIN. It seems to have been imagined by some, that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free governments the rulers are the servants, and the people their superiors and sovereigns. For the former, therefore, to return among the latter, was not to *degrade*, but to *promote*, them. And it would be imposing an unreasonable burden on them, to keep them always in a state of servitude, and not allow them to become again one of the masters.

On the question on Col. MASON'S motion, as above, it passed in the affirmative,—

New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—7; Connecticut, Pennsylvania, Delaware, no—8; Massachusetts, not on the floor.

Mr. GOUVERNEUR MORRIS was now against the whole paragraph. In answer to Col. MASON'S position, that a periodical return of the great officers of the state into the mass of the people was the palladium of civil liberty, he would observe, that on the same principle the Judiciary ought to be periodically degraded; certain it was, that the Legislature ought, on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Doctor FRANKLIN, that a return into the mass of the people would be a promotion, instead of a degradation, he had no doubt that our Executive, like

most others, would have too much patriotism to shrink from the burthen of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole Resolution, as amended, in the words following: "that a National Executive be instituted, to consist of a single person, to be chosen by the National Legislature, for the term of seven years, to be ineligible a second time, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be removable on impeachment and conviction of mal-practice or neglect of duty, to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the national Treasury,"—it passed in the affirmative,—

New Hampshire, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, aye — 6 ; Pennsylvania, Delaware, Maryland, no — 3 ; Massachusetts, not on the floor ; Virginia, divided — Mr. BLAIR and Col. MASON, aye ; General WASHINGTON and Mr. MADISON, no. Mr. RANDOLPH happened to be out of the House.

Mr. MASON moved, "that the Committee of Detail be instructed to receive a clause requiring certain qualifications of landed property, and citizenship of the United States, in members of the National Legislature ; and disqualifying persons having unsettled accounts with, or being indebted to, the United States, from being members of the National Legislature." He observed that persons of the latter descriptions had frequently got into the State Legislatures, in order to promote laws that might shelter their delinquencies ; and that this evil had crept into Congress, if report was to be regarded.

Mr. PINCKNEY seconded the motion.

Mr. GOUVERNEUR MORRIS. If qualifications are proper, he would prefer them in the electors, rather than the elected. As to debtors of the United States, they are but few. As to persons having unsettled accounts, he believed them to be pretty many. He thought, however, that such

a discrimination to be both odious and useless, and in many instances, unjust and cruel. The delay of settlement had been more the fault of the public, than of the individuals. What will be done with those patriotic citizens who have lent money, or services, or property, to their country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

Mr. GORHAM was for leaving to the Legislature the providing against such abuses as had been mentioned.

Col. MASON mentioned the parliamentary qualifications adopted in the reign of Queen Anne, which he said had met with universal approbation.

Mr. MADISON had witnessed the zeal of men having accounts with the public, to get into the Legislatures for sinister purposes. He thought, however, that if any precaution were taken for excluding them, the one proposed by Col. MASON ought to be re-modelled. It might be well to limit the exclusion to persons who had received money from the public, and had not accounted for it.

Mr. GOUVERNEUR MORRIS. It was a precept of great antiquity, as well as of high authority, that we should not be righteous overmuch. He thought we ought to be equally on our guard against being wise overmuch. The proposed regulation would enable the Government to exclude particular persons from office as long as they pleased. He mentioned the case of the Commander-in-Chief's presenting his account for secret services, which, he said, was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet, had the Auditor been disposed to delay the settlement, how easily he might have effected it, and how cruel would it be in such a case to keep a distinguished and meritorious citizen under a temporary disability and disfranchisement. He mentioned this case, merely to illustrate the objectionable nature of the proposition. He was opposed to such minutions regulations in a Constitution. The parliamentary qualifications quoted by Col. MASON had been disregarded

in practice ; and were but a scheme of the landed against the monied interest.

Mr. PINCKNEY and General PINCKNEY moved to insert, by way of amendment, the words "Judiciary and Executive," so as to extend the qualifications to those Departments; which was agreed to, *nem. con.*

Mr. GERRY thought the inconvenience of excluding a few worthy individuals, who might be public debtors, or have unsettled accounts, ought not to be put in the scale against the public advantages of the regulation, and that the motion did not go far enough.

Mr. KING observed, that there might be great danger in requiring landed property as a qualification; since it might exclude the monied interest, whose aids may be essential in particular emergencies to the public safety.

Mr. DICKINSON was against any recital of qualifications in the Constitution. It was impossible to make a complete one; and a partial one would, by implication, tie up the hands of the Legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the Legislature. Whilst this resource should remain pure, the public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a republican Constitution a veneration for wealth. He had always understood that a veneration for poverty and virtue were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a republic, where merit was understood to form the great title to public trust, honors, and rewards.

Mr. GERRY. If property be one object of government, provisions to secure it cannot be improper.

Mr. MADISON moved to strike out the word "*landed*," before the word "qualifications." If the proposition should be agreed to, he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth.

Many enjoyed them to a great extent who were more in debt than they were worth. The unjust laws of the States had proceeded more from this class of men, than any others. It had often happened that men who had acquired landed property on credit got into the Legislatures with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of citizens, who were not landholders. It was politic as well as just, that the interests and rights of every class should be duly represented and understood in the public councils. It was a provision every where established, that the country should be divided into districts, and representatives taken from each, in order that the Legislative assembly might equally understand and sympathize with the rights of the people in every part of the community. It was not less proper, that every class of citizens should have an opportunity of making their rights be felt and understood in the public councils. The three principal classes into which our citizens were divisible, were the landed, the commercial, and the manufacturing. The second and third class bear, as yet, a small proportion to the first. The proportion, however, will daily increase. We see in the populous countries of Europe now, what we shall be hereafter. These classes understand much less of each other's interests and affairs, than men of the same class inhabiting different districts. It is particularly requisite, therefore, that the interests of one or two of them, should not be left entirely to the care or impartiality of the third. This must be the case, if landed qualifications should be required; few of the mercantile, and scarcely any of the manufacturing, class, choosing, whilst they continue in business, to turn any part of their stock into landed property. For these reasons he wished, if it were possible, that some other criterion than the mere possession of land should be devised. He concurred with Mr. GOUVERNEUR

MORRIS in thinking that qualifications in the electors would be much more effectual than in the elected. The former would discriminate between real and ostensible property in the latter; but he was aware of the difficulty of forming any uniform standard that would suit the different circumstances and opinions prevailing in the different States.

Mr. GOUVERNEUR MORRIS seconded the motion.

On the question for striking out "landed,"—New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 10; Maryland, no — 1.

On the question on the first part of Colonel MASON's proposition, as to "qualification of property and citizenship," as so amended,—New Hampshire, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 8; Connecticut, Pennsylvania, Delaware, no — 3.

The second part, for disqualifying debtors, and persons having unsettled accounts, being under consideration,—

Mr. CARROLL moved to strike out, "having unsettled accounts."

Mr. GORHAM seconded the motion; observing, that it would put the commercial and manufacturing part of the people on a worse footing than others, as they would be most likely to have dealings with the public.

Mr. L. MARTIN. If these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Mr. WILSON was for striking them out. They put too much power in the hands of the auditors, who might combine with rivals in delaying settlements, in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids

of individuals, which will necessarily open accounts with the public; and when such accounts will be a characteristic of patriotism. Besides, a partial enumeration of cases will disable the Legislature from disqualifying odious and dangerous characters.

Mr. LANGDON was for striking out the whole clause, for the reasons given by Mr. WILSON. So many exclusions, he thought, too, would render the system unacceptable to the people.

Mr. GERRY. If the arguments used to-day were to prevail, we might have a Legislature composed of public debtors, pensioners, placemen, and contractors. He thought the proposed disqualifications would be pleasing to the people. They will be considered as a security against unnecessary or undue burdens being imposed on them. He moved to add "pensioners" to the disqualified characters; which was negatived,—Massachusetts, Maryland, Georgia, aye—8; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, no—7; North Carolina, divided.

Mr. GOUVERNEUR MORRIS. The last clause, relating to public debtors, will exclude every importing merchant. Revenue will be drawn, it is foreseen, as much as possible from trade. Duties, of course, will be bonded; and the merchants will remain debtors to the public. He repeated that it had not been so much the fault of individuals, as of the public, that transactions between them, had not been more generally liquidated and adjusted. At all events, to draw from our short and scanty experience rules that are to operate through succeeding ages does not savor much of real wisdom.

On the question for striking out, "persons having unsettled accounts with the United States,"—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—9; New Jersey, Georgia, no—2.

Mr. ELLSWORTH was for disagreeing to the remainder of

the clause disqualifying public debtors; and for leaving to the wisdom of the Legislature, and the virtue of the citizens, the task of providing against such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides, how is it to be known to the people, when they elect, who are, or are not, public debtors. The exclusion of pensioners and placemen in England is founded on a consideration not existing here. As persons of that sort are dependent on the crown, they tend to increase its influence.

Mr. PINCKNEY said he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors; it went too far. It would exclude persons who had purchased confiscated property, or should purchase western territory of the public; and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors,—

North Carolina, Georgia, aye — 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, no — 9.

Colonel MASON observed that it would be proper, as he thought, that some provision should be made in the Constitution against choosing for the seat of the General Government the city or place at which the seat of any State Government might be fixed. There were two objections against having them at the same place, which, without mentioning others, required some precaution on the subject. The first was, that it tended to produce disputes concerning jurisdiction. The second and principal one was, that the intermixture of the two Legislatures tended to give a provincial tincture to the national deliberations. He moved that the Committee be instructed to receive a clause to prevent the seat of the National Government being in the same city or town with the seat of the Government of any State longer than until the necessary public buildings could be erected.

Mr. ALEXANDER MARTIN seconded the motion.

Mr. GOUVERNEUR MORRIS did not dislike the idea, but was apprehensive that such a clause might make enemies of Philadelphia and New York, which had expectations of becoming the seat of the General Government.

Mr. LANGDON approved the idea also; but suggested the case of a State moving its seat of government to the national seat after the erection of the public buildings.

Mr. GORHAM. The precaution may be evaded by the National Legislature, by delaying to erect the public buildings.

Mr. GERBY conceived it to be the general sense of America, that neither the seat of a State Government, nor any large commercial city should be the seat of the General Government.

Mr. WILLIAMSON liked the idea; but knowing how much the passions of men were agitated by this matter, was apprehensive of turning them against the system. He apprehended, also, that an evasion might be practised in the way hinted by Mr. GORHAM.

Mr. PINCKNEY thought the seat of a State Government ought to be avoided; but that a large town, or its vicinity, would be proper for the seat of the General Government.

Col. MASON did not mean to press the motion at this time, nor to excite any hostile passions against the system. He was content to withdraw the motion for the present.

Mr. BUTLER was for fixing, by the Constitution, the place, and a central one, for the seat of the National Government.

The proceedings since Monday last were unanimously referred to the Committee of Detail; and the Convention then unanimously adjourned till Monday, August 6th, that the Committee of Detail might have time to prepare and report the Constitution. The whole Resolutions, as referred, are as follows:

1. *Resolved*, That the Government of the United States ought to consist of a supreme Legislative, Judiciary, and Executive.

2. *Resolved*, That the Legislature consist of two branches.

3. *Resolved*, That the members of the first branch of the Legislature ought to be elected by the people of the several States for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

4. *Resolved*, That the members of the second branch of the Legislature of the United States ought to be chosen by the individual Legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to, and and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

5. *Resolved*, That each branch ought to possess the right of originating acts.

6. *Resolved*, That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the States are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

7. *Resolved*, That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, as far as those acts or treaties shall relate to the said States, or their citizens and inhabitants; and that the Judiciaries of the several States shall be bound thereby

in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding.

8. *Resolved*, That in the original formation of the Legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number,

New Hampshire shall send . . .	three,
Massachusetts	eight,
Rhode Island	one,
Connecticut	five,
New York	six,
New Jersey	four,
Pennsylvania	eight,
Delaware	one,
Maryland	six,
Virginia	ten,
North Carolina	five,
South Carolina	five,
Georgia	three.

But as the present situation of the states, may probably alter in the number of their inhabitants, the Legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the States shall hereafter be divided, or enlarged by addition of territory, or any two or more States united, or any new States created within the limits of the United States, the Legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely — Provided always, that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time, by the changes in the relative circumstances of the States,—

9. *Resolved*, That a census be taken within six years from the first meeting of the Legislature of the United States, and once within the term of every ten years after-

wards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the eighteenth of April, 1783 ; and that the Legislature of the United States shall proportion the direct taxation accordingly.

10. *Resolved*, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature of the United States, and shall not be altered or amended by the second branch ; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. *Resolved*, That in the second branch of the Legislature of the United States, each State shall have an equal vote.

12. *Resolved*, That a National Executive be instituted, to consist of a single person ; to be chosen by the National Legislature, for the term of seven years ; to be ineligible a second time ; with power to carry into execution the national laws ; to appoint to offices in cases not otherwise provided for ; to be removable on impeachment, and conviction of malpractice or neglect of duty ; to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury.

13. *Resolved*, That the National Executive shall have a right to negative any legislative act ; which shall not be afterwards passed, unless by two-third parts of each branch of the National Legislature.

14. *Resolved*, That a National Judiciary be established, to consist of one supreme tribunal, the Judges of which shall be appointed by the second branch of the national Legislature ; to hold their offices during good behaviour ; to receive punctually at stated times, a fixed compensation for their services, in which no diminution shall be made so as to affect the persons actually in office at the time of such diminution.

15. *Resolved*, That the National Legislature be empowered to appoint inferior tribunals.

16. *Resolved*, That the jurisdiction of the National Judiciary shall extend to cases arising under laws passed by the General Legislature ; and to such other questions as involve the national peace and harmony.

17. *Resolved*, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

18. *Resolved*, That a republican form of government shall be guaranteed to each State ; and that each State shall be protected against foreign and domestic violence.

19. *Resolved*, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

20. *Resolved*, That the Legislative, Executive and Judiciary powers, within the several States, and of the National Government, ought to be bound, by oath, to support the Articles of Union.

21. *Resolved*, That the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly, or assemblies, of representatives, recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon.

22. *Resolved*, That the representation in the second branch of the Legislature of the United States shall consist of two members from each State, who shall vote *per capita*.

23. *Resolved*, That it be an instruction to the Committee to whom were referred the proceedings of the Convention for the establishment of a National Government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States, for

the Executive, the Judiciary, and the members of both branches of the Legislature of the United States.

With the above Resolutions were referred the propositions offered by Mr. C. PINCKNEY on the twenty-ninth of May, and by Mr. PATTERSON on the fifteenth of June.

Adjourned.

MONDAY, AUGUST 6TH.

In Convention, — Mr. JOHN FRANCIS MERCEB, from Maryland, took his seat.

Mr. BUTLEDGE delivered in the Report of the Committee of Detail, as follows — a printed copy being at the same time furnished to each member:

We the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity.

ARTICLE I.

The style of the Government shall be, "The United States of America."

ARTICLE II.

The Government shall consist of supreme Legislative, Executive, and Judicial powers.

ARTICLE III.

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

ARTICLE IV.

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the

several States comprehended within this Union. The qualifications of the electors shall be the same from time to time, as those of the electors in the several States, of the most numerous branch of their own Legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of Representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the

sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the Executive authority of the State in the representation from which they shall happen.

ARTICLE V.

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall choose its own President and other officers.

ARTICLE VI.

Sect. 1. The times, and places, and manner of holding the elections of the members of each House, shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the

members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns and qualifications, of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any court or place out of the Legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House, on any question, shall, at the desire of one fifth part of the members present, be entered on the Journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— Article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State in which they shall be chosen.

Sect. 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled."

Sect. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated ; who shall enter the objections at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be re-considered, and if approved by two-thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by Yeas and Nays ; and the names of the persons voting for or against the bill, shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the Legislature, by their adjournment, prevent its return ; in which case it shall not be a law.

ARTICLE VII.

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises ;

To regulate commerce with foreign nations, and among the several States ;

To establish an uniform rule of naturalization throughout the United States ;

To coin money ;

To regulate the value of foreign coin ;

To fix the standard of weights and measures ;

To establish post-offices ;

To borrow money, and emit bills on the credit of the United States ;

To appoint a Treasurer by ballot ;

To constitute tribunals inferior to the Supreme Court ;

To make rules concerning captures on land and water ;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations ;

To subdue a rebellion in any State, on the application of its Legislature ;

To make war ;

To raise armies ;

To build and equip fleets ;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions ;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them ; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be

regulated by the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes); which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such a manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two-thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of nobility.

ARTICLE VIII.

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several States, and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions, any thing in the Constitutions or laws of the several States to the contrary notwithstanding.

ARTICLE IX.

Sect. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and Judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory, the Senate shall

possess the following powers:— Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the Legislature, or the Executive authority, of the other State in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number, not less than seven, nor more than nine names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried,

“well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.”

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

ARTICLE X.

Sect. 1. The Executive power of the United States shall be vested in a single person. His style shall be, “The President of the United States of America,” and his title shall be, “His Excellency.” He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature of the state of the Union. He may recommend to their consideration such measures as he shall judge necessary, and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme executives of the several States. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services

a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I——solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

ARTICLE XI.

Sect. 1. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard territory or jurisdiction); between a state and citizens of another State; between citizens of different States; and between a state, or the citizens thereof, and foreign states, citizens or subjects. In cases of impeachment, cases affect-

ing ambassadors, other public ministers and consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases beforementioned, it shall be appellate, with such exceptions, and under such regulations, as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such inferior courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the State where they shall be committed; and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

ARTICLE XII.

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance or confederation; nor grant any title of nobility.

ARTICLE XIII.

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make anything but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the Legislature of the United States can be consulted.

ARTICLE XIV.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

ARTICLE XV.

Any person charged with treason, felony or high misdemeanour in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

ARTICLE XVI.

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the courts and magistrates, of every other State.

ARTICLE XVII.

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two-thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting.

ARTICLE XVIII.

The United States shall guarantee to each State a republican form of government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

ARTICLE XIX.

On the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

ARTICLE XX.

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

ARTICLE XXI.

The ratification of the Conventions of ——— States shall be sufficient for organizing this Constitution.

ARTICLE XXII.

This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen in each State, under the recommendation of its Legislature, in order to receive the ratification of such Convention.

ARTICLE XXIII.

To introduce this government, it is the opinion of this Convention, that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of ——— States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the Legislature should

meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution.

A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the negative, — Pennsylvania, Maryland, Virginia, aye — 3; New Hampshire, Massachusetts, Connecticut, North Carolina, South Carolina, no — 5.

The House then adjourned till to-morrow at eleven o'clock.

TUESDAY, AUGUST 7TH, 1787.

In Convention,— The Report of the Committee of Detail being taken up,—

Mr. PINCKNEY moved that it be referred to a Committee of the Whole. This was strongly opposed by Mr. GORHAM and several others, as likely to produce unnecessary delay; and was negatived, — Delaware, Maryland, and Virginia, only being in the affirmative.

The preamble of the Report was agreed to, *nem. con.* So were Articles 1 and 2.

Article 3 being considered,— Col. MASON doubted the propriety of giving each branch a negative on the other “in all cases.” There were some cases in which it was, he supposed, not intended to be given, as in the case of balloting for appointments.

Mr. G. MORRIS moved to insert “legislative acts,” instead of “all cases.” Mr. WILLIAMSON seconds him.

Mr. SHERMAN. This will restrain the operation of the clause too much. It will particularly exclude a mutual negative in the case of ballots, which he hoped would take place.

Mr. GORHAM contended, that elections ought to be made by *joint ballot*. If separate ballots should be made for the

President, and the two branches should be each attached to a favorite, great delay, contention and confusion may ensue. These inconveniences have been felt in Massachusetts, in the election of officers of little importance compared with the Executive of the United States. The only objection against a joint ballot is, that it may deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquillity and welfare.

Mr. WILSON was for a joint ballot in several cases at least; particularly in the choice of a President; and was therefore for the amendment. Disputes between the two Houses, during and concerning the vacancy of the Executive, might have dangerous consequences.

Col. MASON thought the amendment of Mr. GOUVERNEUR MORRIS extended too far. Treaties are in a subsequent part declared to be laws; they will therefore be subjected to a negative, although they are to be made, as proposed, by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two Houses. Mr. GOUVERNEUR MORRIS thought this but a repetition of the same thing; the mutual negative and distinct assent being equivalent expressions. Treaties he thought were not laws.

Mr. MADISON moved to strike out the words, "each of which shall in all cases have a negative on the other;" the idea being sufficiently expressed in the preceding member of the Article, "vesting the Legislative power" in "distinct bodies," especially as the respective powers, and mode of exercising them, were fully delineated in a subsequent Article.

General PINCKNEY seconded the motion.

On the question for inserting "legislative acts," as moved by Mr. GOUVERNEUR MORRIS, it passed in the negative, the votes being equally divided, — New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina, aye — 5; Delaware, Maryland, Virginia, South Carolina, Georgia no — 5.

On the question for agreeing to Mr. MADISON's motion to strike out, &c. — New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, aye — 7; Connecticut, Maryland, North Carolina, no — 3.

Mr. MADISON wished to know the reasons of the Committee for fixing by the Constitution the time of meeting for the Legislature; and suggested, that it be required only that one meeting at least should be held every year, leaving the time to be fixed or varied by law.

Mr. GOUVERNEUR MORRIS moved to strike out the sentence. It was improper to tie down the Legislature to a particular time, or even to require a meeting every year. The public business might not require it. Mr. PINCKNEY concurred with Mr. MADISON.

Mr. GORHAM. If the time be not fixed by the Constitution, disputes will arise in the Legislature; and the States will be at a loss to adjust thereto the times of their elections. In the New England States, the annual time of meeting had been long fixed by their charters and constitutions, and no inconvenience had resulted. He thought it necessary that there should be one meeting at least every year, as a check on the Executive department.

Mr. ELLSWORTH was against striking out the words. The Legislature will not know, till they are met, whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the Legislature.

Mr. WILSON thought, on the whole, it would be best to fix the day.

Mr. KING could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the States. Those of the National Legislature were but few. The chief of them were commerce and revenue. When these should be once settled, alterations would be rarely necessary and easily made.

Mr. MADISON thought, if the time of meeting should be

fixed by a law, it would be sufficiently fixed, and there would be no difficulty then, as had been suggested, on the part of the States in adjusting their elections to it. One consideration appeared to him to militate strongly against fixing a time by the Constitution. It might happen that the Legislature might be called together by the public exigencies and finish their session but a short time before the annual period. In this case it would be extremely inconvenient to re-assemble so quickly, and without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Colonel MASON thought the objections against fixing the time insuperable; but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the country will supply business. And if it should not the Legislature, besides *legislative*, is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

Mr. SHERMAN was decided for fixing the time, as well as for frequent meetings of the legislative body. Disputes and difficulties will arise between the two Houses, and between both and the States, if the time be changeable. Frequent meetings of parliament were required at the Revolution in England, as an essential safeguard of liberty. So also are annual meetings in most of the American charters and constitutions. There will be business enough to require it. The western country, and the great extent and varying state of our affairs in general, will supply objects.

Mr. RANDOLPH was against fixing any day irrevocably; but as there was no provision made any where in the Constitution for regulating the periods of meeting, and some precise time must be fixed, until the Legislature shall make provision, he could not agree to strike out the words altogether. Instead of which he moved to add the words following: "unless a different day shall be appointed by law."

Mr. MADISON seconded the motion; and on the question, — Massachusetts, Pennsylvania, Delaware, Maryland, Vir-

ginia, North Carolina, South Carolina, Georgia, aye — 8; New Hampshire, Connecticut, no — 2.

Mr. GOUVERNEUR MORRIS moved to strike out "December," and insert "May." It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the winter, and of which intelligence would arrive in the spring.

Mr. MADISON seconded the motion. He preferred May to December, because the latter would require the traveling to and from the seat of government in the most inconvenient seasons of the year.

Mr. WILSON. The winter is the most convenient season for business.

Mr. ELLSWORTH. The summer will interfere too much with private business, that of almost all the probable members of the Legislature being more or less connected with agriculture.

Mr. RANDOLPH. The time is of no great moment now, as the Legislature can vary it. On looking into the Constitutions of the States, he found that the times of their elections, with which the elections of the National Representatives would no doubt be made to coincide, would suit better with December than May, and it was advisable to render our innovations as little incommodious as possible.

On the question for "May" instead of "December," — South Carolina, Georgia aye — 2; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 8.

Mr. REED moved to insert after the word, "Senate," the words, "subject to the negative to be hereafter provided." His object was to give an absolute negative to the Executive. He considered this as so essential to the Constitution, to the preservation of liberty, and to the public welfare, that his duty compelled him to make the motion.

Mr. GOUVERNEUR MORRIS seconded him; and on the question, —

Delaware, aye — 1; New Hampshire, Massachusetts,

Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 9.

Mr. RUTLEDGE. Although it is agreed on all hands that an annual meeting of the Legislature should be made necessary, yet that point seems not to be free from doubt as the clause stands. On this suggestion, "once at least in every year," were inserted, *nem. con.*

Article 3, with the foregoing alterations, was agreed to, *nem. con.*, and is as follows: "The Legislative power shall be vested in a Congress to consist of two separate and distinct bodies of men, a House of Representatives and a Senate. The Legislature shall meet at least once in every year; and such meeting shall be on the first Monday in December, unless a different day shall be appointed by law."

Article 4, Sect. 1, was taken up.

Mr. GOUVERNEUR MORRIS moved to strike out the last member of the section, beginning with the words, "qualifications of Electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Mr. FITZSIMONS seconded the motion.

Mr. WILLIAMSON was opposed to it.

Mr. WILSON. This part of the Report was well considered by the Committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature.

Mr. GOUVERNEUR MORRIS. Such a hardship would be neither great nor novel. The people are accustomed to it, and not dissatisfied with it, in several of the States. In some, the qualifications are different for the choice of the Governor and of the Representatives; in others, for different houses of the Legislature. Another objection against the

clause, as it stands, is, that it makes the qualifications of the National Legislature depend on the will of the States, which he thought not proper.

Mr. ELLSWORTH thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State Constitutions. The people will not readily subscribe to the National Constitution, if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people.

Colonel MASON. The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised? A power to alter the qualifications, would be a dangerous power in the hands of the Legislature.

Mr. BUTLER. There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland, where they have at length thrown all power into the hands of the Senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. DICKINSON had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defence against the dangerous influence of those multitudes without property and without principle, with which our country, like all others, will in time abound. As to the unpopularity of the innovation, it was, in his opinion, chimerical. The great mass of our citizens is composed at this time of freeholders, and will be pleased with it.

Mr. ELLSWORTH. How shall the freehold be defined? Ought not every man who pays a tax, to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear a

full share of the public burthens, be not allowed a voice in the imposition of them? Taxation and representation ought to go together.

Mr. GOUVERNEUR MORRIS. He had long learned not to be the dupe of words. The sound of aristocracy, therefore, had no effect upon him. It was the thing, not the name, to which he was opposed; and one of his principal objections to the Constitution, as it is now before us, is, that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property and they will sell them to the rich, who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers, who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words, "taxation and representation." The man who does not give his vote freely, is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence; because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining "freeholders" to be insuperable. Still less than the restriction could be unpopular. Nine-tenths of the people are at present freeholders, and these will certainly be pleased with it. As to merchants &c., if they have wealth, and value the right, they can acquire it. If not, they don't deserve it.

Col. MASON. We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea, in his opinion, was, that every man having evidence of attachment to, and permanent common interest with, the society, ought to share in all its rights and priv-

ileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens?

Mr. MADISON. The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the Legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the States, where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times, a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation — in which case the rights of property and the public liberty will not be secure in their hands — or, what is more probable, they will become the tools of opulence and ambition; in which case, there will be equal danger on another side. The example of England has been misconceived (by Col. MASON). A very small proportion of the Representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States; and it was in the boroughs and cities, rather than the counties, that bribery most prevailed, and the influence of the Crown on elections was most dangerously exerted.

Doctor FRANKLIN. It is of great consequence that we should not depress the virtue and public spirit of our common people ; of which they displayed a great deal during the war, and which contributed principally to the favourable issue of it. He related the honourable refusal of the American seamen, who were carried in great numbers into the British prisons during the war to redeem themselves from misery, or to seek their fortunes, by entering on board the ships of the enemies to their country ; contrasting their patriotism with a contemporary instance, in which the British seamen made prisoners by the Americans readily entered on the ships of the latter, on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors. He quoted, as arbitrary, the British statute setting forth the danger of tumultuous meetings, and, under that pretext, narrowing the right of suffrage to persons having freeholds of a certain value ; observing that this statute was soon followed by another, under the succeeding parliament, subjecting the people who had no votes to peculiar labors and hardships. He was persuaded, also, that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. MEROER. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the Senate in Virginia, as an example in point. The people in towns can unite their votes in favor of one favorite ; and by that means always prevail over the people of the

country; who being dispersed will scatter their votes among a variety of candidates.

Mr. RUTLEDGE thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people; and make enemies of all those who should be excluded.

On the question for striking out, as moved by Mr. GOUVERNEUR MORRIS, from the word "qualifications" to the end of the third article,— Delaware, aye — 1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, no — 7; Maryland, divided; Georgia, not present.

Adjourned.

WEDNESDAY, AUGUST 8TH.

In Convention,—Article 4, sect. 1, being under consideration,—

Mr. MERCER expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr. GORHAM. He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston, where the merchants and mechanics vote, are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. MADISON). The cities and large towns are not the seat of Crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr. MERCER did not object so much to an election by the people at large, including such as were not freeholders, as to their being left to make their choice without any

guidance. He hinted that candidates ought to be nominated by the State Legislatures.

On the question for agreeing to Article 4, Sect. 1, it passed, *nem. con.*

Article 4, Sect. 2, was then taken up.

Colonel MASON was for opening a wide door for emigrants; but did not choose to let foreigners and adventurers make laws for us and govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representative. This was the principal ground of his objection to so short a term. It might also happen, that a rich foreign nation, for example Great Britain, might send over her tools, who might bribe their way into the Legislature for insidious purposes. He moved that "seven" years, instead of "three," be inserted.

Mr. GOUVERNEUR MORRIS seconded the motion; and on the question, all the States agreed to it, except Connecticut.

Mr. SHERMAN moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Mr. MADISON seconded the motion. Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virginia concerning the meaning of residence as a qualification of representatives, which were determined more according to the affection or dislike to the man in question than to any fixed interpretation of the word.

Mr. WILSON preferred "inhabitant."

Mr. GOUVERNEUR MORRIS was opposed to both, and for requiring nothing more than a freehold. He quoted great disputes in New York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely choose a non-resident. It is improper, as in the first branch, *the people at large*, not the *States*, are represented.

Mr. RUTLEDGE urged and moved, that a residence of

seven years should be required in the State wherein the member should be elected. An emigrant from New England to South Carolina or Georgia would know little of its affairs, and could not be supposed to acquire a thorough knowledge in less time.

Mr. READ reminded him that we were now forming a *national government*, and such a regulation would correspond little with the idea that we were one people.

Mr. WILSON enforced the same consideration.

Mr. MADISON suggested the case of new States in the west, which could have, perhaps, no representation on that plan.

Mr. MERCER. Such a regulation would present a greater alienship than existed under the old federal system. It would interweave local prejudices and State distinctions, in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Mr. ELLSWORTH thought seven years of residence was by far too long a term; but that some fixed term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr. DICKINSON proposed that it should read "inhabitant actually resident for — years." This would render the meaning less indeterminate.

Mr. WILSON. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States, whilst at the seat of the General Government.

Mr. MERCER. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State, although a want of the necessary knowledge could not in such cases be presumed.

Mr. MASON thought seven years too long, but would

never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan, that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, rich men of neighbouring States may employ with success the means of corruption in some particular district, and thereby get into the public councils after having failed in their own States. This is the practice in the boroughs of England.

On the question for postponing in order to consider Mr. DICKINSON's motion, —

Maryland, South Carolina, Georgia, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no — 8.

On the question for inserting "inhabitant," in place of "resident," — agreed to, *nem. con.*

Mr. ELLSWORTH and Col. MASON moved to insert "one year" for previous inhabitancy.

Mr. WILLIAMSON liked the Report as it stood. He thought resident a good enough term. He was against requiring any period of previous residence. New residents, if elected, will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Mr. BUTLER and Mr. BUTLEDGE moved "three years," instead of "one year," for previous inhabitancy.

On the question for "three years," —

South Carolina, Georgia, aye — 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 9,

On the question for "one year," —

New Jersey, North Carolina, South Carolina, Georgia, aye — 4; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, no — 6; Maryland, divided.

Article 4, Sect. 2, as amended in manner preceding, was agreed to, *nem. con.*

Article 4, Sect. 3, was then taken up.

General PINCKNEY and Mr. PINCKNEY moved that the number of Representatives allotted to South Carolina be "six."

On the question, —

Delaware, North Carolina, South Carolina, Georgia, aye — 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, no — 7.

The third section of Article 4, was then agreed to.

Article 4, Sect. 4, was then taken up.

Mr. WILLIAMSON moved to strike out, "according to the provisions hereinafter made," and to insert the words, "according to the rule hereafter to be provided for direct taxation."—See Art. 7, Sect. 3.

On the question for agreeing to Mr. WILLIAMSON'S amendment, —

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 9; New Jersey, Delaware, no — 2.

Mr. KING wished to know what influence the vote just passed was meant to have on the succeeding part of the Report, concerning the admission of slaves into the rule of representation. He could not reconcile his mind to the Article, if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore, because he had hoped that this concession would have produced a readiness, which had not been manifested, to strengthen the General Government, and to mark a full confidence in it. The Report under consideration had, by the tenor of it, put an end to all those hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? What are the great objects of the general system? First, defence against foreign invasion; secondly, against internal

sedition. Shall all the States, then, be bound to defend each, and shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the United States be bound to defend another part and that other part be at liberty, not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the General Government to defend their masters? There was so much inequality and unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation would have taken place on this subject; that at least a time would have been limited for the importation of slaves. He never could agree to let them be imported without limitation, and then be represented in the National Legislature. Indeed, he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. SHERMAN regarded the slave trade as iniquitous; but the point of representation having been settled after much difficulty and deliberation, he did not think himself bound to make opposition; especially as the present Article, as amended, did not preclude any arrangement whatever on that point, in another place of the Report.

Mr. MADISON objected to one for every forty thousand inhabitants as a perpetual rule. The future increase of population, if the Union should be permanent will render the number of Representatives excessive.

Mr. GORHAM. It is not to be supposed that the Government will last so long as to produce this effect. Can it be supposed that this vast country, including the western territory, will, one hundred and fifty years hence, remain one nation?

Mr. ELLSWORTH. If the Government should continue

so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

Mr. SHERMAN and Mr. MADISON moved to insert the words, "not exceeding," before the words, "one for every forty thousand," which was agreed to, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of Heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other States having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States, and enter New York, the effects of the institution become visible. Passing through the Jerseys and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take, through the great regions of slaves, presents a desert, increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this, that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights

of mankind, than the citizen of Pennsylvania or New Jersey, who views with a laudable horror so nefarious a practice. He would add, that domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favourite offspring of aristocracy. And what is the proposed compensation to the Northern States, for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defence of the Southern States, for their defence against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The Legislature will have indefinite power to tax them by excises, and duties on imports; both of which will fall heavier on them than on the Southern inhabitants; for the Bohea tea used by a Northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack, and the difficulty of defence; nay, they are to be encouraged to it, by an assurance of having their votes in the National Government increased in proportion; and are, at the same time, to have their exports and their slaves exempt from all contributions for the public service. Let it not be said, that direct taxation is to be proportioned to representation. It is idle to suppose that the General Government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports and excises. For what, then, are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution.

Mr. DAYTON seconded the motion. He did it, he said,

that his sentiments on the subject might appear, whatever might be the fate of the amendment.

Mr. SHERMAN did not regard the admission of the negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the Southern States who were, in fact, to be represented according to the taxes paid by them, and the negroes are only included in the estimate of the taxes. This was his idea of the matter.

Mr. PINCKNEY considered the fisheries, and the Western frontier, as more burthensome to the United States than the slaves. He thought this could be demonstrated, if the occasion were a proper one.

Mr. WILSON thought the motion premature. An agreement to the clause would be no bar to the object of it.

On the question, on the motion to insert "free" before "inhabitants,"—New Jersey, aye—1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—10.

On the suggestion of Mr. DICKINSON, the words, "provided that each State shall have one representative at least," were added, *nem. con.*

Article 4, Sect. 4, as amended, was agreed to, *nem. con.*

Article 4, Sect. 5, was then taken up.

Mr. PINCKNEY moved to strike out Sect. 5, as giving no peculiar advantage to the House of Representatives, and as clogging the Government. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. GORHAM was against allowing the Senate to *originate*, but was for allowing it only to *amend*.

Mr. GOUVERNEUR MORRIS. It is particularly proper that the Senate should have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due

correctness ; and so as to prevent delay of business in the other House.

Col. MASON was unwilling to travel over this ground again. To strike out the section, was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the contrary, he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an aristocracy was, that it was the government of the few over the many. An aristocratic body, like the screw in mechanics, working its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse-strings should never be put into its hands.

Mr. MERCER considered the exclusive power of originating money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal and of no consequence.

Mr. BUTLER was for adhering to the principle which had been settled.

Mr. WILSON was opposed to it on its merits, without regard to the compromise.

Mr. ELLSWORTH did not think the clause of any consequence ; but as it was thought of consequence by some members from the larger States, he was willing it should stand.

Mr. MADISON was for striking it out ; considering it as of no advantage to the large States, as fettering the Government, and as a source of injurious altercations between the two Houses.

On the question for striking out "Article 4, Sect. 5,"—
New Jersey, Pennsylvania, Delaware, Maryland, Virginia,
South Carolina, Georgia, aye — 7 ; New Hampshire, Massachusetts, Connecticut, North Carolina, no — 4.

Adjourned.

THURSDAY, AUGUST 9TH.

In Convention,—Article 4, Sect. 6, was taken up.

Mr. RANDOLPH expressed his dissatisfaction at the disagreement yesterday to Sect. 5, concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

Mr. WILLIAMSON said he had formed a like intention.

Mr. WILSON gave notice that he should move to reconsider the vote requiring seven instead of three years of citizenship, as a qualification of candidates for the House of Representatives.

Article 4, Sections 6 and 7, were agreed to, *nem. con.*

Article 5, Sect. 1, was then taken up.

Mr. WILSON objected to vacancies in the Senate being supplied by the Executives of the States. It was unnecessary, as the Legislatures will meet so frequently. It removes the appointment too far from the people, the Executives in most of the States being elected by the Legislatures. As he had always thought the appointment of the Executive by the Legislative department wrong, so it was still more so that the Executive should elect into the Legislative department.

Mr. RANDOLPH thought it necessary in order to prevent inconvenient chasms in the Senate. In some States the Legislatures meet but once a year. As the Senate will have more power and consist of a smaller number than the other House, vacancies there will be of more consequence. The Executives might be safely trusted, he thought, with the appointment for so short a time.

Mr. ELLSWORTH. It is only said that the Executive *may* supply vacancies. When the Legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a State, vacancies may be of great moment.

Mr. WILLIAMSON. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out, "vacancies shall be supplied by the Executives,"— Pennsylvania, aye—1; New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no—8; Maryland, divided.

Mr. WILLIAMSON moved to insert, after "vacancies shall be supplied by the Executives," the words, "unless other provision shall be made by the Legislature" (of the State).

Mr. ELLSWORTH. He was willing to trust the Legislature, or the Executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

On the question on Mr. WILLIAMSON'S motion, — Maryland, North Carolina, South Carolina, Georgia, aye, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, no—6.

Mr. MADISON, in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after "vacancies," and insert the words, "happening by refusals to accept, resignations, or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the Executive thereof until the next meeting of the Legislature."

Mr. GOUVERNEUR MORRIS. This is absolutely necessary; otherwise, as members chosen into the Senate are disqualified from being appointed to any office by Sect. 9, of this Article, it will be in the power of a Legislature, by appointing a man a Senator against his consent to deprive the United States of his services.

The motion of Mr. MADISON was agreed to, *nem. con.*

Mr. RANDOLPH called for a division of the Section, so as to leave a distinct question on the last words, "each member shall have one vote." He wished this last sentence to

be postponed until the reconsideration should have taken place on Article 4, Sect. 5, concerning money bills. If that section should be re-instated, his plan would be to vary the representation in the Senate.

Mr. STRONG concurred in Mr. RANDOLPH's ideas on this point.

Mr. READ did not consider the section as to money-bills of any advantage to the larger States, and had voted for striking it out as being viewed in the same light by the larger States. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being re-instated.

Mr. WILSON, Mr. ELLSWORTH, and Mr. MADISON, urged, that it was of no advantage to the larger States; and that it might be a dangerous source of contention between the two Houses. All the principal powers of the National Legislature had some relation to money.

Doctor FRANKLIN considered the two clauses, the originating of money bills, and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Colonel MASON said this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated, that it was of essential importance to restrain the right to the House of Representatives, the immediate choice of the people.

Mr. WILLIAMSON. The State of North Carolina had agreed to an equality in the Senate merely in consideration that money bills should be confined to the other House: and he was surprised to see the smaller States forsaking the condition on which they had received their equality.

On the question on the first section, down to the last sentence, — New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia aye — 7; Massa-

achusetts, Pennsylvania,* North Carolina, no — 3; South Carolina, divided.

Mr. RANDOLPH moved that the last sentence "each member shall have one vote," be postponed.

It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it would still be proper that the members should vote *per capita*. A postponement of the preceding sentence, allowing to each State two members, would have been more proper.

Mr. MASON did not mean to propose a change of this mode of voting *per capita*, in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each State may have two members, and yet may have unequal votes. He said that unless the exclusive right of originating money bills should be restored to the House of Representatives, he should — not from obstinacy, but duty and conscience — oppose throughout the equality of representation in the Senate.

Mr. GOUVERNEUR MORRIS. Such declarations were he supposed, addressed to the smaller States, in order to alarm them for their equality in the Senate, and induce them, against their judgments, to concur in restoring the section concerning money bills. He would declare in his turn, that as he saw no prospect of amending the Constitution of the Senate, and considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality, at all events.

Mr. WILSON. It seems to have been supposed by some that the section concerning money bills is desirable to the large States. The fact was, that two of those States (Pennsylvania and Virginia) had uniformly voted against it, without reference to any other part of the system.

Mr. RANDOLPH urged, as Col. MASON had done, that the

*In the printed Journal, Pennsylvania, aye.

sentence under consideration was connected with that relating to money bills, and might possibly be affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

On the question for postponing, "each member shall have one vote,"—

Virginia, North Carolina, aye — 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no — 8; New Hampshire, divided.

The words were then agreed to as part of the section.

Mr. RANDOLPH then gave notice that he should move to reconsider this whole Article 5, Sect. 1, as connected with the Article 4, Sect. 5, as to which he had already given such notice.

Article 5, Sect. 2, was then taken up.

Mr. GOUVERNEUR MORRIS moved to insert, after the words, "immediately after," the following: "they shall be assembled in consequence of," which was agreed to, *nem. con.*, as was then the whole section.

Article 5, Sect. 3, was then taken up.

Mr. GOUVERNEUR MORRIS moved to insert fourteen instead of four years citizenship, as a qualification for Senators; urging the danger of admitting strangers into our public councils.

Mr. PINCKNEY seconded him.

Mr. ELLSWORTH was opposed to the motion, as discouraging meritorious aliens from emigrating to this country.

Mr. PINCKNEY. As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Col. MASON highly approved of the policy of the motion. Were it not that many, not natives of this country, had acquired great credit during the Revolution, he should

be for restraining the eligibility into the Senate, to natives.

Mr. MADISON was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the *Constitution* unnecessary and improper;—unnecessary, because the National Legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence, as conditions of enjoying different privileges of citizenship;—improper, because it will give a tincture of illiberality to the Constitution; because it will put out of the power of the national Legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers; and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our Governments, great numbers of respectable Europeans, men who loved liberty, and wished to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the State Legislatures, if they were left at liberty to do so; nor that foreign powers would make use of strangers, as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy and watchfulness in the public.

Mr. BUTLER was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them, not only attachments to other countries, but ideas of government so distinct from ours, that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an

improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Doctor FRANKLIN was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large, but in both Houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the Revolution, that many strangers served us faithfully, and that many natives took part against their country. When foreigners after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Mr. RANDOLPH did not know but it might be problematical whether emigrations to this country were on the whole useful or not: but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American Constitutions. Many foreigners may have fixed their fortunes among us, under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system. He would go as far as seven years, but no further.

Mr. WILSON said he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in

inviting meritorious foreigners among us, and the discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed, is a circumstance grating and mortifying.

Mr. GOUVERNEUR MORRIS. The lesson we are taught is, that we should be governed as much by our reason, and as little by our feelings, as possible. What is the language of reason on this subject? That we should not be polite at the expense of prudence. There was a moderation in all things. It is said that some tribes of Indians carried their hospitality so far as to offer to strangers their wives and daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings, but would not carry the complaisance so far as to bed them with his wife. He would let them worship at the same altar, but did not choose to make priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every society, from a great nation down to a club, had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those citizens of the world, as they called themselves, he owned, he did not wish to see any of them in our public councils. He would not trust them. The men who can shake off their attachments to their own country, can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a French-

man into your Senate, and he will study to increase the commerce of France : an Englishman and he will feel an equal bias in favor of that of England. It has been said, that the Legislatures will not choose foreigners, at least improper ones. There was no knowing what Legislatures would do. Some appointments made by them proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this State in disgrace, and worked himself into an appointment from another to Congress.

On the question, on the motion of Mr. GOUVERNEUR MORRIS, to insert fourteen in place of four years,—

New Hampshire, New Jersey, South Carolina, Georgia, aye — 4 ; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 7.

On the question for thirteen years, moved by Mr. GOUVERNEUR MORRIS, it was negatived, as above.

On ten years, moved by General PINCKNEY, the votes were the same.

Doctor FRANKLIN reminded the Convention, that it did not follow, from an omission to insert the restriction in the Constitution, that the persons in question would be actually chosen into the Legislature.

Mr. RUTLEDGE. Seven years of citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate which will have more power.

Mr. WILLIAMSON. It is more necessary to guard the Senate in this case, than the other House. Bribery and cabal can be more easily practised in the choice of the Senate which is to be made by the Legislatures composed of a few men, than of the House of Representatives who will be chosen by the people.

Mr. RANDOLPH will agree to nine years, with the expectation that it will be reduced to seven, if Mr. WILSON's motion to reconsider the vote fixing seven years for the

House of Representatives should produce a reduction of that period.

On the question for nine years, —

New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia, aye — 6; Massachusetts, Connecticut, Pennsylvania, Maryland, no — 4; North Carolina, divided.

The term “resident” was struck out, and “inhabitant” inserted, *nem. con.*

Article 5, Sect. 3, as amended, was then agreed to, *nem. con.*

Article 5, Sect. 4, was agreed to, *nem. con.*

Article 6, Sect. 1, was then taken up.

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to strike out, “each House,” and to insert, “the House of Representatives,” the right of the Legislatures to regulate the times and places, &c., in the election of Senators, being involved in the right of appointing them; which was disagreed to.

A division of the question being called for, it was taken on the first part down to, “but their provisions concerning,” &c.

The first part was agreed to *nem. con.*

Mr. PINCKNEY and Mr. RUTLEDGE moved to strike out the remaining part, viz., “but their provisions concerning them may at any time be altered by the Legislature of the United States.” The States, they contended, could and must be relied on in such cases.

Mr. GOBHAM. It would be as improper to take this power from the National Legislature, as to restrain the British Parliament from regulating the circumstances of elections, leaving this business to the counties themselves.

Mr. MADISON. The necessity of a General Government supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people, and not to the Legislatures of the States, sup-

poses that the result will be somewhat influenced by the mode. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner, of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or *viva voce*; should assemble at this place or that place; should be divided into districts, or all meet at one place; should all vote for all the Representatives, or all in a district vote for a number allotted to the district, — these and many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favourite measure to carry, they would take care so to mould their regulations as to favour the candidates they wished to succeed. Besides, the inequality of the representation in the Legislatures of particular States would produce a like inequality in their representation in the National Legislature, as it was presumable that the counties having the power in the former case, would secure it to themselves in the latter. What danger could there be in giving a controlling power to the National Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State Legislatures. If the latter, therefore could be trusted, their representatives could not be dangerous. Secondly, of Representatives elected by the same people who elect the State Legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the representatives of the people in the General Legislature, as it would be to give to the latter a like power over the election of their representatives in the State Legislature.

Mr. KING. If this power be not given to the National Legislature, their right of judging of the returns of their

members may be frustrated. No probability has been suggested of its being abused by them. Although this scheme of erecting the General Government on the authority of the State Legislatures has been fatal to the Federal establishment, it would seem as if many gentlemen still foster the dangerous idea.

Mr. GOUVERNEUR MORRIS observed, that the States might make false returns, and then make no provisions for new elections.

Mr. SHERMAN did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State Legislatures.

The motion of Mr. PINCKNEY and Mr. BUTLEDGE did not prevail.

The word "respectively" was inserted after the word "State."

On the motion of Mr. READ, the word "their" was struck out, and "regulations in such cases," inserted in place of "provisions concerning them,"—the clause then reading: "but regulations, in each of the foregoing cases, may, at any time, be made or altered by the Legislature of the United States." This was meant to give the National Legislature a power not only to alter the provisions of the States, but to make regulations, in case the States should fail or refuse altogether. Article 6, Sect. 1, as thus amended, was agreed to, *nem. con.*

Adjourned.

FRIDAY, AUGUST 10TH.

In Convention, — Article 6, Sect. 2, was taken up.

Mr. PINCKNEY. The Committee, as he had conceived, were instructed to report the proper qualifications of property for the members of the National Legislature; instead of which they have referred the task to the National Legislature itself. Should it be left on this footing, the first Legislature will meet without any particular qualifications

of property; and if it should happen to consist of rich men they might fix such qualifications as may be too favourable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristocratic influence in the Constitution, but he thought it essential that the members of the Legislature, the Executive, and the Judges, should be possessed of competent property to make them independent and respectable. It was prudent, when such great powers were to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. The Legislature would have the fate of the nation put into their hands. The president would also have a very great influence on it. The Judges would not only have important causes between citizen and citizen, but also where foreigners are concerned. They will even be the umpires between the United States, and individual States; as well as between one State and another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the National Legislature. He would, however, leave the sums blank. His motion was, that the President of the United States, the Judges, and members of the Legislature, should be required to swear that they were respectively possessed of a clear unincumbered estate, to the amount of ——— in the case of the President, &c., &c.

Mr. RUTLEDGE seconded the motion; observing, that the Committee had reported no qualifications, because they could not agree on any among themselves, being embarrassed by the danger, on one side of displeasing the people, by making them high, and on the other, of rendering them nugatory, by making them low.

Mr. ELLSWORTH. The different circumstances of different parts of the United States, and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifica-

tions. Make them so high as to be useful in the Southern States, and they will be inapplicable to the Eastern States. Suit them to the latter, and they will serve no purpose, in the former. In like manner, what may be accommodated to the existing state of things among us, may be very inconvenient in some future state of them. He thought for these reasons, that it was better to leave this matter to the Legislative discretion, than to attempt a provision for it in the Constitution.

Doctor FRANKLIN expressed his dislike to everything that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with were the richest rogues. We should remember the character which the Scripture requires in rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe; and if it should betray a great partiality to the rich, will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country.

The motion of Mr. PINCKNEY was rejected by so general a *no*, that the States were not called.

Mr. MADISON was opposed to the section, as vesting an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a republican government, and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy, as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their constituents, there was the same reason for being jealous of them, as there was for

relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power, also, which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions, may be devised by the stronger in order to keep out partizans of a weaker faction.

Mr. ELLSWORTH admitted that the power was not unexceptionable; but he could not view it as dangerous. Such a power with regard to the electors would be dangerous, because it would be much more liable to abuse.

Mr. GOUVERNEUR MORRIS moved to strike out "with regard to property," in order to leave the Legislature entirely at large.

Mr. WILLIAMSON. This would surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body.

Mr. MADISON observed that the British Parliament possessed the power of regulating the qualifications, both of the electors and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes, in both cases, subservient to their own views, or to the views of political or religious parties.

On the question on the motion to strike out, "with regard to property,"—Connecticut, New Jersey, Pennsylvania, Georgia, aye—4; New Hampshire, Massachusetts, Delaware,* Maryland, Virginia, North Carolina, South Carolina, no—7.

Mr. RUTLEDGE was opposed to leaving the power to the Legislature. He proposed that the qualifications should be the same as for members of the State Legislatures.

Mr. WILSON thought it would be best, on the whole, to

* In the printed Journal, Delaware did not vote.

let the section go out. A uniform rule would probably never be fixed by the Legislature; and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to Article 6, Sect. 2,—New Hampshire, Massachusetts, Georgia, aye — 3; Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, no — 7.

On motion of Mr. WILSON to reconsider Article 4, Sect. 2, so as to restore "three," in place of "seven," years of citizenship, as a qualification for being elected into the House of Representatives,—Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye — 6; New Hampshire, Massachusetts, New Jersey, South Carolina, Georgia, no — 5.

Monday next was then assigned for the reconsideration; all the States being aye, except Massachusetts and Georgia.

Article 6. Sect. 3, was then taken up.

MR. GORHAM contended that less than a majority in each House should be made a quorum; otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

Mr. MERCER was also for less than a majority. So great a number will put it in the power of a few, by seceding at a critical moment, to introduce convulsions, and endanger the Government. Examples of secession have already happened in some of the States. He was for leaving it to the Legislature to fix the quorum, as in Great Britain, where the requisite number is small and no inconvenience has been experienced.

Col. MASON. This is a valuable and necessary part of the plan. In this extended country, embracing so great a diversity of interests, it would be dangerous to the distant parts, to allow a small number of members of the two Houses to make laws. The central States could always take care to be on the spot; and by meeting earlier than the distant ones, or wearying their patience, and outstaying

them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; but he had also known good produced by an apprehension of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution, as now moulded, was founded on sound principles, and was disposed to put into it extensive powers. At the same time, he wished to guard against abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased, and the United States might be governed by a junto. A majority of the number which had been agreed on, was so few that he feared it would be made an objection against the plan.

Mr. KING admitted there might be some danger of giving an advantage to the central States, but was of opinion that the public inconvenience, on the other side, was more to be dreaded.

Mr. GOUVERNEUR MORRIS moved to fix the quorum at thirty-three members in the House of Representatives, and fourteen in the Senate. This is a majority of the present number, and will be a bar to the Legislature. Fix the number low, and they will generally attend, knowing that the advantage may be taken of their absence. The secession of a small number ought not to be suffered to break a quorum. Such events in the States may have been of little consequence. In the national councils they may be fatal. Besides other mischief, if a few can break up a quorum, they may seize a moment, when a particular part of the continent may be in need of immediate aid, to extort, by threatening a secession, some unjust and selfish measure.

Mr. MERCER seconded the motion.

Mr. KING said he had just prepared a motion which, instead of fixing the numbers proposed by Mr. GOUVERNEUR MORRIS as quorums, made those the lowest numbers, leaving the Legislature at liberty to increase them or not. He

thought the future increase of members would render a majority of the whole extremely cumbersome.

Mr. MERCER agreed to substitute Mr. KING's motion in place of Mr. MORRIS's.

Mr. ELLSWORTH was opposed to it. It would be a pleasing ground of confidence to the people, that no law or burthen could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion, with regard to the number of Representatives, that a very inconvenient number was not to be apprehended. The inconvenience of secessions may be guarded against, by giving to each House an authority to require the attendance of absent members.

Mr. WILSON concurred in the sentiments of Mr. ELLSWORTH.

Mr. GERRY seemed to think that some further precaution than merely fixing the quorum, might be necessary. He observed, that as seventeen would be a majority of a quorum of thirty-three, and eight of fourteen, questions might by possibility be carried in the House of Representatives by two large States, and in the Senate by the same States with the aid of two small ones. He proposed that the number for a quorum in the House of Representatives, should not exceed fifty, nor be less than thirty-three; leaving the intermediate discretion to the Legislature.

Mr. KING. As the quorum could not be altered, without the concurrence of the President, by less than two-thirds of each House, he thought there could be no danger in trusting the Legislature.

Mr. CARROLL. This would be no security against the continuance of the quorums at thirty-three, and fourteen, when they ought to be increased.

On the question of Mr. KING's motion, that not less than thirty-three in the House of Representatives, nor less than fourteen in the Senate should constitute a quorum, which may be increased by a law, on additions to the members in either House,—

Massachusetts, Delaware, aye—2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—9.

Mr. RANDOLPH and Mr. MADISON moved to add to the end of Article 6, Sect. 3, "and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide." Agreed to by all except Pennsylvania, which was divided.

Article 6, Sect. 3, was agreed to as amended, *nem. con.*

Sections 4 and 5, of Article 6, were then agreed to, *nem. con.*

Mr. MADISON observed that the right of expulsion (Article 6, Sect. 6) was too important to be exercised by a bare majority of a quorum; and, in emergencies of faction, might be dangerously abused. He moved that, "with the concurrence of two-thirds," might be inserted between "may" and "expel."

Mr. RANDOLPH and Mr. MASON approved the idea.

Mr. GOUVERNEUR MORRIS. This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men, from factious motives, may keep in a member who ought to be expelled.

Mr. CARROLL thought that the concurrence of two-thirds, at least, ought to be required.

On the question requiring two-thirds, in cases of expelling a member,—ten States were in the affirmative; Pennsylvania, divided.

Article 6, Sect. 6, as thus amended, was then agreed to, *nem. con.*

Article 6, Sect. 7, was then taken up.

Mr. GOUVERNEUR MORRIS urged, that if the Yeas and Nays were proper at all, any individual ought to be authorized to call for them; and moved an amendment to that effect. The small States may otherwise be under a disadvantage, and find it difficult to get a concurrence of one-fifth.

Mr. RANDOLPH seconded the motion.

Mr. SHEEMAN had rather strike out the Yeas and Nays altogether. They have never done any good, and have done much mischief. They are not proper, as the reasons governing the voter never appear along with them.

Mr. ELLSWORTH was of the same opinion.

Colonel MASON liked the section as it stood. It was a middle way between two extremes.

Mr. GORHAM was opposed to the motion for allowing a single member to call the Yeas and Nays, and recited the abuses of it in Massachusetts; first, in stuffing the Journals with them on frivolous occasions; secondly, in misleading the people, who never know the reasons determining the votes.

The motion for allowing a single member to call the Yeas and Nays, was disagreed to, *nem. con.*

Mr. CARROLL and Mr. RANDOLPH moved to strike out the words, "each House," and to insert the words, "the House of Representatives," in Sect. 7, Article 6; and to add to the section the words, "and any member of the Senate shall be at liberty to enter his dissent."

Mr. GOUVERNEUR MORRIS and Mr. WILSON observed, that if the minority were to have a right to enter their votes and reasons, the other side would have a right to complain if it were not extended to them: and to allow it to both, would fill the Journals, like the records of a court, with replications, rejoinders, &c.

On the question on Mr. CARROLL's motion to allow a member to enter his dissent,—Maryland, Virginia, South Carolina, aye—3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no—8.

Mr. GERRY moved to strike out the words, "when it shall be acting in its legislative capacity," in order to extend the provision to the Senate when exercising its peculiar authorities; and to insert, "except such parts thereof as in their judgment require secrecy," after the words "publish them."—(It was thought by others that

provision should be made with respect to these, when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words, "when acting in its legislative capacity," Massachusetts, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—7; Connecticut, New Jersey, Pennsylvania, no—3; New Hampshire, divided.

Adjourned.

—————
SATURDAY, AUGUST 11TH.

In Convention,—Mr. MADISON and Mr. RUTLEDGE moved, "that each House shall keep a Journal of its proceedings, and shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its legislative capacity, as may be judged by that House to require secrecy."

Mr. MERCER. This implies that other powers than legislative will be given to the Senate, which he hoped would not be given.

Mr. MADISON and Mr. RUTLEDGE's motion was disagreed to, by all the States except Virginia.

Mr. GERRY and Mr. SHERMAN moved to insert, after the words, "publish them," the following, "except such as relate to treaties and military operations." Their object was to give each House a discretion in such cases. On this question,—Massachusetts, Connecticut, aye—2; New Hampshire, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no—8.

Mr. ELLSWORTH. As the clause is objectionable in so many shapes, it may as well be struck out altogether. The Legislature will not fail to publish their proceedings from time to time. The people will call for it, if it should be improperly omitted.

Mr. WILSON thought the expunging of the clause would be very improper. The people have a right to know what

their agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings. Besides, as this is a clause in the existing confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak and suspicious minds may be easily misled.

Mr. MASON thought it would give a just alarm to the people, to make a conclave of their Legislature.

Mr. SHERMAN thought the Legislature might be trusted in this case, if in any.

On the question on the first part of the section, down to "*publish them*," inclusive,—it was agreed to, *nem. con.*

On the question on the words to follow, to wit, "except such parts thereof as may in their judgment require secrecy,"—Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, aye—6; Pennsylvania, Delaware, Maryland, South Carolina, no—4; New Hampshire, divided.

The remaining part, as to Yeas and Nays, was agreed to, *nem. con.*

Article 6, Sect. 8, was then taken up.

Mr. KING remarked that the section authorized the two Houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the Federal Government, and would require as strong a cure as we could devise. He thought a law at least should be made necessary to a removal of the seat of government.

Mr. MADISON viewed the subject in the same light, and joined with Mr. King in a motion requiring a law.

Mr. GOUVERNEUR MORRIS proposed the additional alteration by inserting the words, "during the session, &c."

Mr. SPAIGHT. This will fix the seat of government at New York. The present Congress will convene there in the first instance, and they will never be able to remove; especially if the President should be a Northern man.

Mr. GOUVERNEUR MORRIS. Such a distrust is inconsistent with all government.

Mr. MADISON supposed that a central place for the seat of government was so just, and would be so much insisted on by the House of Representatives, that though a law should be made requisite for the purpose, it could and would be obtained. The necessity of a central residence of the Government would be much greater under the new than old Government. The members of the new Government would be more numerous. They would be taken more from the interior parts of the States; they would not, like members of the present Congress, come so often from the distant States by water. As the powers and objects of the new Government would be far greater than heretofore, more private individuals would have business calling them to the seat of it; and it was more necessary that the Government should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with every part of the nation. These considerations, he supposed, would extort a removal, even if a law were made necessary. But in order to quiet suspicions, both within and without doors, it might not be amiss to authorize the two Houses, by a concurrent vote, to adjourn at their first meeting to the most proper place, and to require thereafter the sanction of a law to their removal.

The motion was accordingly moulded into the following form: "the Legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither House shall afterwards, during the session of the House of Representatives, without the consent of the other, adjourn for more than three days; nor shall they adjourn to any other place than such as shall have been fixed by law."

Mr. GERRY thought it would be wrong to let the President check the will of the two Houses on this subject at all.

Mr. WILLIAMSON supported the ideas of Mr. SPAIGHT.

Mr. CARROLL was actuated by the same apprehensions.

Mr. MERCER. It will serve no purpose to require the

two Houses at their first meeting to fix on a place. They will never agree.

After some further expressions from others denoting an apprehension that the seat of government might be continued at an improper place, if a law should be made necessary to a removal, and after the motion above stated, with another for re-committing the section, had been negatived, the section was left in the shape in which it was reported, as to this point. The words, "during the session of the Legislature," were prefixed to the eighth section; and the last sentence, "but this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the — Article," struck out. The eighth section, as amended, was then agreed to.

Mr. RANDOLPH moved, according to notice, to reconsider Article 4, Sect. 5, concerning money bills, which had been struck out. He argued,— first, that he had not wished for this privilege, whilst a proportional representation in the Senate was in contemplation; but since an equality had been fixed in that House, the large States would require this compensation at least. Secondly, that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body, and will expect that the usual guards against its influence will be provided according to the example of Great Britain. Thirdly, the privilege will give some advantage to the House of Representatives, if it extends to the originating only; but still more, if it restrains the Senate from amending. Fourthly, he called on the smaller States to concur in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose, instead of the original section, a clause specifying that the bills in question should be for the purpose of revenue, in order to repel the objection against the extent of the words, "*raising money*," which might happen incidentally; and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate

the inconveniences urged against a restriction of the Senate to a simple affirmation or negative.

Mr. WILLIAMSON seconded the motion.

Mr. PINCKNEY was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion, but as he considered it a mere waste of time he could not bring himself to consent to it. He said that, notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of representation in the first branch was the true condition of that in the second branch. Several others spoke for and against the reconsideration, but without going into the merits.

On the question to reconsider,—

New Hampshire, Massachusetts, Connecticut, New Jersey,* Pennsylvania, Delaware, Virginia, North Carolina, Georgia, aye — 9 ; Maryland, no — 1 ; South Carolina, divided.

Monday was then assigned for the reconsideration.

Adjourned.

MONDAY, AUGUST 13TH.

In Convention,—Article 4, Sect. 2, being reconsidered,—

Mr. WILSON and Mr. RANDOLPH moved to strike out “seven years,” and insert “four years,” as the requisite term of citizenship to qualify for the House of Representatives. Mr. WILSON said it was very proper the electors should govern themselves by this consideration; but unnecessary and improper that the Constitution should chain them down to it.

Mr. GERBY wished that in future the eligibility might be confined to natives. Foreign powers will intermeddle in our affairs, and spare no expense to influence them. Persons having foreign attachments will be sent among us and insinuated into our councils, in order to be made in-

* In the printed Journal, New Jersey, no.

struments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Massachusetts reasoned in the same manner.

Mr. WILLIAMSON moved to insert nine years instead of seven. He wished this country to acquire as fast as possible national habits. Wealthy emigrants do more harm by their luxurious examples, than good by the money they bring with them.

Colonel HAMILTON was in general against embarrassing the Government with minute restrictions. There was, on one side, the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious and admitted. Persons in Europe of moderate fortunes will be fond of coming here, where they will be on a level with the first citizens. He moved that the section be so altered as to require merely "citizenship and inhabitancy." The right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject, which will answer every purpose.

Mr. MADISON seconded the motion. He wished to maintain the character of liberality which had been professed in all the Constitutions and publications of America. He wished to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity. That part of America which had encouraged them most, had advanced most rapidly in population, agriculture and the arts. There was a possible danger, he admitted, that men with foreign predilections might obtain appointments; but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native country, our own people would prefer natives of this country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted

among the electors, but among the elected, and among natives having full confidence of the people, not among strangers who would be regarded with a jealous eye.

Mr. WILSON cited Pennsylvania as a proof of the advantage of encouraging emigrations. It was perhaps the youngest settlement (except Georgia) on the Atlantic; yet it was at least among the foremost in population and prosperity. He remarked that almost all the general officers of the Pennsylvania line of the late army were foreigners; and no complaint had ever been made against their fidelity or merit. Three of her Deputies to the Convention (Mr. R. MORRIS, Mr. FITZSIMONS, and himself) were also not natives. He had no objection to Colonel HAMILTON's motion, and would withdraw the one made by himself.

Mr. BUTLER was strenuous against admitting foreigners into our public councils.

On the question on Colonel HAMILTON's motion,—

Connecticut, Pennsylvania, Maryland, Virginia, aye — 4; New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no — 7.

On the question on Mr. WILLIAMSON's motion, to insert "nine years" instead of "seven,"—

New Hampshire, South Carolina, Georgia, aye — 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland Virginia, North Carolina, no — 8.

Mr. WILSON renewed the motion for four years instead of seven; and on the question,—

Connecticut, Maryland, Virginia, aye — 3; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, no — 8.

Mr. GOUVERNEUR MORRIS moved to add to the end of the section (Article 4, Sect. 2,) a proviso that the limitation of seven years should not affect the rights of any person now a citizen.

Mr. MERCER seconded the motion. It was necessary, he said, to prevent a disfranchisement of persons who had become citizens, under the faith and according to the laws and

Constitution, from their actual level in all respects with natives.

Mr. RUTLEDGE. It might as well be said that all qualifications are disfranchisements, and that to require the age of twenty-five years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now citizens, as to those who are to be naturalized in future.

Mr. SHERMAN. The United States have not invited foreigners, nor pledged their faith that they should enjoy equal privileges with native citizens. The individual States alone have done this. The former therefore are at liberty to make any discriminations they may judge requisite.

Mr. GORHAM. When foreigners are naturalized, it would seem as if they stand on an equal footing with natives. He doubted, then, the propriety of giving a retrospective force to the restriction.

Mr. MADISON animadverted on the peculiarity of the doctrine of Mr. SHERMAN. It was subtilty by which every national engagement might be evaded. By parity of reason, whenever our public debts or foreign treaties become inconvenient, nothing more would be necessary to relieve us from them, than to re-model the Constitution. It was said that the *United States*, as such, have not pledged their faith to the naturalized foreigners, and therefore are not bound. Be it so, and that the States alone are bound. Who are to form the new constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the States the agents? Will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their act? If the new Constitution, then, violates the faith pledged to any description of people, will not the makers of it, will not the States, be the violators? To justify the doctrine, it must be said that the States can get rid of the obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He con-

sidered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which would soon be echoed from the other side of the Atlantic; and would unnecessarily enlist among the adversaries of the reform a very considerable body of citizens. We should moreover reduce every State to the dilemma of rejecting it, or of violating the faith pledged to a part of its citizens.

Mr. GOUVERNEUR MORRIS considered the case of persons under twenty-five years of age as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age should be in all cases on a level with those above it. But with regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of citizens. If the restriction as to age had been confined to natives, and had left foreigners under twenty-five years of age eligible in this case, the discrimination would have been an equal injustice on the other side.

Mr. PINCKNEY remarked that the laws of the States had varied much the terms of naturalization in different parts of America; and contended that the United States could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Col. MASON was struck, not, like Mr. MADISON, with the *peculiarity*, but the *propriety*, of the doctrine of Mr. SHERMAN. The States have formed different qualifications themselves for enjoying different rights of citizenship. Greater caution would be necessary in the outset of the Government than afterwards. All the great objects would then be provided for. Every thing would be then set in motion. If persons among us attached to Great Britain should work themselves into our councils, a turn might be given to our affairs, and particularly to our commercial regulations, which might have pernicious consequences. The great houses of British merchants would spare no pains to insinuate the instruments of their views into the Government.

Mr. WILSON read the clause in the Constitution of Pennsylvania giving to foreigners, after two years' residence, all the rights whatsoever of citizens; combined it with the Article of Confederation making the citizens of one State citizens of all, inferred the obligation Pennsylvania was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaint which her failure would authorize. He observed, likewise, that the princes and states of Europe would avail themselves of such breach of faith, to deter their subjects from emigrating to the United States.

Mr. MERCER enforced the same idea of a breach of faith.

Mr. BALDWIN could not enter into the force of the arguments against extending the disqualification to foreigners now citizens. The discrimination of the place of birth was not more objectionable than that of age, which all had concurred in the propriety of.

On the question on the proviso of Mr. GOUVERNEUR MORRIS in favor of foreigners now citizens,—Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, aye — 5; New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia, no — 6.

Mr. CARROLL moved to insert "five" years, instead of "seven" in Article 4, Sect. 2,—Connecticut, Maryland, Virginia, aye — 3; New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no — 7; Pennsylvania, divided.

The Section (Article 4, Sect. 2,) as formerly amended, was then agreed to, *nem. con.*

Mr. WILSON moved that, in Article 5, Sect. 3, nine years be reduced to seven; which was disagreed to, and the Article 5, Sect. 3, confirmed by the following vote,—New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 8; Connecticut, Pennsylvania, Maryland, no — 3.

Article 4, Sect. 5, being reconsidered,—

Mr. RANDOLPH moved that the clause be altered so as

to read : " Bills for raising money for the *purpose of revenue*, or for appropriating the same, shall originate in the House of Representatives ; and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation." He would not repeat his reasons, but barely reminded the members from the smaller States of the compromise by which the larger States were entitled to this privilege.

Colonel MASON. This amendment removes all the objections urged against the section, as it stood at first. By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally arise. By authorizing amendments in the Senate, it got rid of the objections that the Senate could not correct errors of any sort, and that it would introduce into the House of Representatives the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. First, the Senate did not represent the *people*, but the *States*, in their political character. It was improper therefore that it should tax the people. The reason was the same against their doing it, as it had been against Congress doing it. Secondly, nor was it in any respect necessary, in order to cure the evils of our republican system. He admitted that, notwithstanding the superiority of the republican form over every other, it had its evils. The chief ones were, the danger of the majority oppressing the minority, and the mischievous influence of demagogues. The general government of itself will cure them. As the States will not concur at the same time in their unjust and oppressive plans, the General Government will be able to check and defeat them, whether they result from the wickedness of the majority, or from the misguidance of demagogues. Again the Senate is not, like the House of Representatives, chosen frequently and obliged to

return frequently among the people. They are to be chosen by the States for six years—will probably settle themselves at the seat of government—will pursue schemes for their own aggrandisement—will be able, by wearying out the House of Representatives, and taking advantage of their impatience at the close of a long session, to extort measures for that purpose. If they should be paid, as he expected would be yet determined and wished to be so, out of the national treasury, they will, particularly, extort an increase of their wages. A bare negative was a very different thing, from that of originating bills. The practice in England was in point. The House of Lords does not represent nor tax the people, because not elected by the people. If the Senate can originate, they will in the recess of the Legislative sessions, hatch their mischievous projects, for their own purposes, and have their money bills cut and dried (to use a common phrase) for the meeting of the House of Representatives. He compared the case to Poyning's law, and signified that the House of Representatives might be rendered by degrees, like the parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise, so much had passed on that subject that he would say nothing about it. He did not mean, by what he had said, to oppose the permanency of the Senate. On the contrary, he had no repugnance to an increase of it, nor to allowing it a negative, though the Senate was not, by its present constitution, entitled to it. But in all events, he would contend that the purse strings should be in the hands of the representatives of the people.

Mr. WILSON was himself directly opposed to the equality of votes granted to the Senate, by its present constitution. At the same time he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark, as an insuperable objection against the proposed restriction of money bills to the House of Representatives, that it would be a source of perpetual contentions, where there was no

mediator to decide them. The President here could not, like the Executive Magistrate in England, interpose by a prorogation, or dissolution. This restriction had been found pregnant with altercation in every State where the constitution had established it. The House of Representatives will insert other things in money bills, and by making them conditions of each other destroy the deliberate liberty of the Senate. He stated the case of a preamble to a money bill sent up by the House of Commons in the reign of Queen Anne, to the House of Lords, in which the conduct of the misplaced Ministry, who were to be impeached before the Lords, was condemned; the Commons thus extorting a premature judgment without any hearing of the parties to be tried; and the House of Lords being thus reduced to the poor and disgraceful expedient of opposing, to the authority of a law, a protest on their Journals against its being drawn into precedent. If there was anything like Poyning's law in the present case, it was in the attempt to vest the exclusive right of originating in the House of Representatives, and so far he was against it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse-strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in those of the Senate. Both Houses must concur in untying, and of what importance could it be, which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose, and would be in the habits of business. War, commerce and revenue were the great objects of the General Government. All of them are connected with money. The restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever.

Mr. GERRY considered this as a part of the plan that would be much scrutinized. Taxation and representation are strongly associated in the minds of the people; and they

will not agree that any but their immediate representatives shall meddle with their purses. In short, the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills.

Mr. GOUVERNEUR MORRIS. All the arguments suppose the right to originate and to tax, to be exclusively vested in the Senate. The effects commented on, may be produced by a negative only in the Senate. They can tire out the other House, and extort their concurrence in favorite measures, as well by withholding their negative, as by adhering to a bill introduced by themselves.

Mr. MADISON thought, if the substitute offered by Mr. RANDOLPH for the original section is to be adopted, it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be restrained from checking the extravagance of the other House? One of the greatest evils incident to republican government was the spirit of contention and faction. The proposed substitute, which in some respects lessened the objections against the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two Houses. The word *revenue* was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue should be the sole object, in exclusion even of other incidental effects? When the contest was first opened with Great Britain, their power to regulate trade was admitted, — their power to raise revenue rejected. An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words *amend or alter* form an equal source of doubt and altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Representatives, it will be called an origination under the name of an amendment. The Senate may actually couch

extraneous matter under that name. In these cases, the question will turn on the *degree* of connection between the matter and object of the bill, and the altercation or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virginia, where the Senate can originate no bill. The words, "so as to *increase or diminish* the sum to be raised," were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new Government, the sum to be raised, would be increased or diminished by a variety of collateral circumstances influencing the consumption, in general, — the consumption of foreign or of domestic articles, — of this or that particular species of articles, — and even by the mode of collection which may be closely connected with the productiveness of a tax. The friends of this section had argued its necessity from the permanency of the Senate. He could not see how this argument applied. The Senate was not more permanent now than in the form it bore in the original propositions of Mr. RANDOLPH, and at the time when no objection whatever was hinted against its originating money bills. Or if in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated, as has been urged as the indemnification, the permanency of the Senate will remain the same. If the right to originate be vested exclusively in the House of Representatives, either the Senate must yield, against its judgment, to that House, — in which case the utility of the check will be lost, — or the Senate will be inflexible, and the House of Representatives must adapt its money bill to the views of the Senate; in which case the exclusive right will be of no avail. As to the compromise of which so much had been said, he would make a single observation. There were five States which had opposed the equality of votes in the Senate, viz: Massachusetts, Pennsylvania, Vir-

ginia, North Carolina, and South Carolina. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five States a majority, viz: Pennsylvania, Virginia, and South Carolina, have uniformly voted against the proposed compensation, on its own merits, as rendering the plan of government still more objectionable. Massachusetts has been divided. North Carolina alone has set a value on the compensation, and voted on that principle. What obligation, then, can the small States be under to concur, against their judgments, in reinstating the section?

Mr. DICKINSON. Experience must be our only guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English constitution. It was not reason that discovered, or ever could have discovered, the odd, and, in the eyes of those who are governed by reason, the absurd mode of trial by jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is, then, our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people? Whence the effect may have proceeded, he could not say; whether from the respect with which this privilege inspired the other branches of government, to the House of Commons, or from the turn of thinking it gave to the people at large with regard to their rights; but the effect was visible and could not be doubted. Shall we oppose, to this long experience, the short experience of eleven years which we had ourselves on this subject? As to disputes, they could not be avoided any way. If both Houses should originate, each would have a different bill to which it would be attached, and for which it would contend. He observed that all the prejudices of the people would be offended by refusing this exclusive privilege to the House of Representatives, and these prejudices should never be disregarded by us when no essential purpose was to be served.

When this plan goes forth, it will be attacked by the popular leaders. Aristocracy will be the watchword, the Shibboleth, among its adversaries. Eight States have inserted in their Constitutions the exclusive right of originating money bills in favor of the popular branch of the Legislature. Most of them, however, allowed the other branch to amend. This, he thought, would be proper for us to do.

Mr. RANDOLPH regarded this point as of such consequence, that, as he valued the peace of this country, he would press the adoption of it. We had numerous and monstrous difficulties to combat. Surely we ought not to increase them. When the people behold in the Senate the countenance of an aristocracy, and in the President the form at least of a little monarch, will not their alarms be sufficiently raised without taking from their immediate representatives a right which has been so long appropriated to them? The Executive will have more influence over the Senate, than over the House of Representatives. Allow the Senate to originate in this case, and that influence will be sure to mix itself in their deliberations and plans. The declaration of war, he conceived, ought not to be in the Senate, composed of twenty-six men only, but rather in the other House. In the other House ought to be placed the origination of the means of war. As to commercial regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills for the *mere* or *sole* purpose of raising revenue. The Senate will be more likely to be corrupt than the House of Representatives, and should therefore have less to do with money matters. His principal object, however, was to prevent popular objections against the plan, and to secure its adoption.

Mr. RUTLEDGE. The friends of this motion are not consistent in their reasoning. They tell us that we ought to be guided by the long experience of Great Britain, and not our own experience of eleven years; and yet they themselves propose to depart from it. The *House of Commons* not only have the exclusive right of originating, but the

Lords are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale? They cannot but see that it is of no real consequence; and will be more likely to be displeased with it as an attempt to bubble them than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect, till examined and approved by the House of Representatives, there can be no possible danger. These clauses in the Constitutions of the States had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in South Carolina, where the Senate cannot originate or amend money bills, has shown that it answers no good purpose; and produces the very bad one of continually dividing and heating the two Houses. Sometimes, indeed, if the matter of the amendment of the Senate is pleasing to the other House, they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make formal amendments, but to send down a schedule of the alterations which will procure the bill their assent.

Mr. CARBOLL. The most ingenious men in Maryland are puzzled to define the case of money-bills, or explain the Constitution on that point; though it seemed to be worded with all possible plainness and precision. It is a source of continual difficulty and squabble between the two Houses.

Mr. McHENRY mentioned an instance of extraordinary subterfuge, to get rid of the apparent force of the Constitution.

On the question on the first part of the motion, as to the exclusive originating of money-bills in the House of Representatives,—

New Hampshire, Massachusetts, Virginia, (Mr. BLAIR and MADISON, no; Mr. RANDOLPH, Colonel MASON, and General WASHINGTON,* aye;) North Carolina, aye — 4; Connecticut, New Jersey, Pennsylvania, Delaware Maryland, South Carolina, Georgia, no — 7.

On the question on originating by the House of Representatives, and *amending* by the Senate. as reported, Article 4, Sect. 5,—

New Hampshire, Massachusetts, Virginia,† North Carolina, aye — 4; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no — 7.

On the question on the last clause of Article 4, Sect. 5, viz., “No money shall be drawn from the public treasury, but in pursuance of *appropriations* that shall originate in the House of Representatives,” it passed in the negative,— Massachusetts, aye — 1; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 10.

Adjourned.

TUESDAY, AUGUST 14TH.

In Convention,— Article 6, Sect. 9, was taken up.

Mr. PINCKNEY argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the Legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a school of public ministers, a nursery of statesmen. That it was *impolitic*, because the Legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section, in order to take up the following proposition, viz.,

* He disapproved, and till now voted against, the exclusive privilege. He gave up his judgment, he said, because it was not of very material weight with him, and was made an essential point with others, who, if disappointed, might be less cordial in other points of real weight.

† In the printed Journal, Virginia, no.

“the members of each House shall be incapable of holding any office under the United States, for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively.”

General MIFFLIN seconded the motion.

Colonel MASON ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American soil; for completing that aristocracy which was probably in the contemplation of some among us; and for inviting into the legislative service those generous and benevolent characters, who will do justice to each other's merit, by carving out offices and rewards for it. In the present state of American morals and manners, few friends, it may be thought, will be lost to the plan, by the opportunity of giving premiums to a mercenary and depraved ambition.

Mr. MERCER. It is a first principle in political science, that whenever the rights of property are secured, an aristocracy will grow out of it. Elective governments also necessarily become aristocratic, because the rulers being few can and will draw emoluments for themselves from the many. The governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the governors, not of the people. The people are dissatisfied, and complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability and uncertainty to their other evils. Governments can only be maintained by *force* or *influence*. The Executive has not *force* — deprive him of *influence*, by rendering the members of the Legislature ineligible to Executive offices, and he becomes a mere phantom of authority. The aristocratic part will not even let him in for a share of the plunder. The Legislature must and will be composed of

wealth and abilities, and the people will be governed by a junto. The Executive ought to have a Council, being members of both Houses. Without such an influence the war will be between the aristocracy and the people. He wished it to be between the aristocracy and the Executive. Nothing else can protect the people against those speculating Legislatures, which are now plundering them throughout the United States.

Mr. GERRY read a resolution of the Legislature of Massachusetts, passed before the act of Congress recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the fifth Article of the Confederation; nor to agree, in any case, to give to the members of Congress a capacity to hold offices under the government. This, he said, was repealed in consequence of the act of Congress, with which the State thought it proper to comply in an unqualified manner. The sense of the State, however, was still the same. He could not think with Mr. PINCKNEY, that the disqualification was degrading. Confidence is the road to tyranny. As to ministers and ambassadors, few of them were necessary. It is the opinion of a great many that they ought to be discontinued on our part, that none may be sent among us; and that source of influence shut up. If the Senate were to appoint ambassadors, as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions, as to wish to establish nurseries for them. If they are once appointed, the House of Representatives will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the Legislature without a prospect of such offices, our situation is deplorable indeed. If our best citizens are actuated by such mercenary views, we had better choose a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one gentleman (Mr. MERCER), our government, it seems, is to be a government of plunder. In that case, it

certainly would be prudent to have but one, rather than many to be employed in it. We cannot be too circumspect in the formation of this system. It will be examined on all sides, and with a very suspicious eye. The people, who have been so lately in arms against Great Britain for their liberties, will not easily give them up. He lamented the evils existing, at present, under our governments; but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands, it is as complete an aristocracy as ever was framed. If great powers should be given to the Senate, we shall be governed in reality by a junto, as has been apprehended. He remarked that it would be very differently constituted from Congress. In the first place, there will be but two Deputies from each State; in Congress there may be seven, and are generally, five. In the second place, they are chosen for six years; those of Congress annually. In the third place, they are not subject to recall; those of Congress are. And finally, in Congress *nine* States are necessary for all great purposes; here eight *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the House of Representatives, as well as of the Senate, ineligible, not only during, but for one year after the expiration of their terms. If it should be thought that this will injure the Legislature, by keeping out of it men of abilities, who are willing to serve in other offices it may be required as a qualification for other offices, that the candidates shall have served a certain time in the Legislature.

Mr. GOUVERNEUR MORRIS. Exclude the officers of the Army and Navy, and you form a band having a different interest from, and opposed to, the civil power. You stimulate them to despise and reproach those "talking Lords who dare not face the foe." Let this spirit be roused at the end of a war, before your troops shall have laid down

their arms, and though the civil authority be "entrenched in parchment to the teeth," they will cut their way to it. He was against rendering the members of the Legislature ineligible to offices. He was for rendering them eligible again, after having vacated their seats by accepting office. Why should we not avail ourselves of their services if the people choose to give them their confidence? There can be little danger of corruption, either among the people, or the Legislatures, who are to be the electors. If they say, we see their merits—we honor the men—we choose to renew our confidence in them; have they not a right to give them a preference—and can they be properly abridged of it?

Mr. WILLIAMSON introduced his opposition to the motion, by referring to the question concerning "money bills." That clause, he said, was dead. Its ghost, he was afraid, would, notwithstanding, haunt us. It had been a matter of conscience with him, to insist on it, as long as there was hope of retaining it. He had swallowed the vote of rejection with reluctance. He could not digest it. All that was said, on the other side, was, that the restriction was not *convenient*. We have now got a House of Lords which is to originate money bills. To avoid another *inconvenience*, we are to have a whole Legislature, at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves, would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it worse, by expunging the present section. He had scarcely seen a single corrupt measure in the Legislature of North Carolina, which could not be traced up to office hunting.

Mr. SHERMAN. The Constitution should lay as few temptations as possible in the way of those in power. Men of abilities will increase as the country grows more populous, and as the means of education are more diffused.

Mr. PINCKNEY. No State has rendered the members of

the Legislature ineligible to offices. In South Carolina the Judges are eligible into the Legislature. It cannot be supposed, then, that the motion will be offensive to the people. If the State Constitution should be revised, he believed restrictions of this sort would be rather diminished than multiplied.

Mr. WILSON could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting and responsible for the welfare of millions, not immediately represented in this House. He had also asked himself the serious question, what he should say to his constituents, in case they should call upon him to tell them, why he sacrificed his own judgment in a case where they authorized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort—did you suppose the people of Pennsylvania had not good sense enough to receive a good government? Under this impression, he should certainly follow his own judgment, which disapproved of the section. He would remark, in addition to the objections urged against it, that as one branch of the Legislature was to be appointed by the Legislatures of the States, the other by the people of the States; as both are to be paid by the States, and to be appointable to State offices; nothing seemed to be wanting to prostrate the National Legislature, but to render its members ineligible to national offices, and by that means take away its power of attracting those talents which were necessary to give weight to the Government, and to render it useful to the people. He was far from thinking the ambition which aspired to offices of dignity and trust an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards which might engage it in the career of public service. He observed that the State of Pennsylvania, which had gone as far as any State into the

policy of fettering power, had not rendered the members of the Legislature ineligible to offices of government.

Mr. ELLSWORTH did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve two years, or seven years in the Legislature, for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the Legislature; although, whilst members, they should be ineligible to public offices. Besides, merit will be most encouraged, when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

Mr. MERCER was extremely anxious on this point. What led to the appointment of this Convention? The corruption and mutability of the legislative councils of the States. If the plan does not remedy these, it will not recommend itself; and we shall not be able in our private capacities to support and enforce it: nor will the best part of our citizens exert themselves for the purpose. It is a great mistake to suppose that the paper we are to propose, will govern the United States. It is the men whom it will bring into the Government, and interest in maintaining it, that are to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business. All government must be by force or influence. It is not the King of France, but 200,000 janissaries of power, that govern that kingdom. There will be no such force here; influence, then, must be substituted; and he would ask, whether this could be done, if the members of the Legislature should be ineligible to offices of State; whether such a disqualification would not determine all the most influential men to stay at home, and prefer appointments within their respective States.

Mr. WILSON was by no means satisfied with the answer given by Mr. ELLSWORTH to the argument as to the discouragement of merit. The members must either go a

second time into the Legislature, and disqualify themselves ; or say to their constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and having answered this purpose, we do not choose to be again elected.

Mr. GOUVERNEUR MORRIS put the case of a war, and the citizen most capable of conducting it happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the course, of the late contest for our liberties ?

On the question for postponing, in order to take up Mr. PINCKNEY's motion, it was lost,— New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, aye — 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, no — 5; Georgia, divided.

Mr. GOUVERNEUR MORRIS moved to insert, after " office," " except offices in the Army or Navy: but, in that case, their offices shall be vacated."

Mr. BROOM seconds him.

Mr. RANDOLPH had been, and should continue, uniformly opposed to the striking out of the clause, as opening a door for influence and corruption. No arguments had made any impression on him, but those which related to the case of war, and a coëxisting incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. GOUVERNEUR MORRIS.

Mr. BUTLER and Mr. PINCKNEY urged a general postponement of Article 6, Sect. 9, till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of State to be chosen out of that body.

A general postponement was agreed to, *nem. con.*

Article 6, Sect. 10, was then taken up,— " that members be paid by their respective States."

Mr. ELLSWORTH said, that in reflecting on this subject, he had been satisfied, that too much dependence on the

States would be produced by this mode of payment. He moved to strike it out, and insert, "that they should be paid out of the treasury of the United States an allowance not exceeding —— dollars per day, or the present value thereof.

Mr. GOUVERNEUR MORRIS remarked that if the members were to be paid by the States, it would throw an unequal burthen on the distant States, which would be unjust, as the Legislature was to be a national assembly. He moved that the payment be out of the national treasury; leaving the quantum to the discretion of the National Legislature. There could be no reason to fear that they would overpay themselves.

Mr. BUTLER contended for payment by the States; particularly in the case of the Senate, who will be so long out of their respective States that they will lose sight of their constituents, unless dependent on them for their support.

Mr. LANGDON was against payment by the States. There would be some difficulty in fixing the sum, but it would be unjust to oblige the distant States to bear the expense of their members in travelling to and from the seat of government.

Mr. MADISON. If the House of Representatives is to be chosen *biennially*, and the Senate to be *constantly* dependent on the Legislatures, which are chosen *annually*, he could not see any chance for that stability in the General Government the want of which was a principal evil in the State Governments. His fear was, that the organization of the Government supposing the Senate to be really independent for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the State Governments, which separately had been found insufficient. The Senate was formed on the model of that of Maryland. The revisionary check on that of New York. What the effect of a union of these provisions might be, could not be foreseen. The enlargement of the sphere of the Government was, indeed a circumstance which he

thought would be favourable, as he had on several occasions undertaken to show. He was, however, for fixing at least two extremes not to be exceeded by the National Legislature in the payment of themselves.

Mr. GERRY. There are difficulties on both sides. The observation of Mr. BUTLER has weight in it. On the other side, the State Legislatures may turn out the Senators by reducing their salaries. Such things have been practiced.

Col MASON. It has not yet been noticed, that the clause as it now stands makes the House of Representatives also dependent on the State Legislatures: so that both Houses will be made the instruments of the politics of the States, whatever they may be.

Mr. BROOM could see no danger in trusting the General Legislature with the payment of themselves. The State Legislatures had this power, and no complaint had been made of it.

Mr. SHERMAN was not afraid that the Legislature would make their own wages too high, but too low; so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be, to fix a moderate allowance to be paid out of the national treasury, and let the States make such additions as they might judge fit. He moved that five dollars per day be the sum, any further emoluments to be added by the States.

Mr. CARROLL had been much surprised at seeing this clause in the Report. The dependence of both Houses on the State Legislatures is complete; especially as the members of the former are eligible to State offices. The States can now say: If you do not comply with our wishes, we will starve you; if you do, we will reward you. The new Government in this form was nothing more than a second edition of Congress, in two volumes instead of one, and perhaps with very few amendments.

Mr. DICKINSON took it for granted that all were convinced of the necessity of making the General Government independent of the prejudices, passions, and improper views

of the State Legislatures. The contrary of this was effected by the section as it stands. On the other hand, there were objections against taking a permanent standard, as wheat, which had been suggested on a former occasion; as well as against leaving the matter to the pleasure of the National Legislature. He proposed that an act should be passed, every twelve years, by the National Legislature settling the quantum of their wages. If the General Government should be left dependent on the State Legislatures, it would be happy for us if we had never met in this room.

Mr. ELLSWORTH was not unwilling himself to trust the Legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, though perhaps not insuperable objections. He thought changes in the value of money provided for by his motion in the words, "or the present value thereof."

Mr. L. MARTIN. As the Senate is to represent the States, the members of it ought to be paid by the States.

Mr. CARROLL. The Senate was to represent and manage the affairs of the whole and not to be the advocates of State interests. They ought then not to be dependent on, nor paid by the States.

On the question for paying the members of the legislature out of the national treasury,—New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye — 9; Massachusetts, South Carolina, no — 2.

Mr. ELLSWORTH moved that the pay be fixed at five dollars, or the present value thereof, per day, during their attendance, and for every thirty miles in travelling to and from Congress.

Mr. STRONG preferred four dollars, leaving the States at liberty to make additions.

On the question for fixing the pay at five dollars,—
— Connecticut, Virginia, aye — 2; New Hampshire, Mas-

sachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia no — 9.

Mr. DICKINSON proposed that the wages of the members of both Houses should be required to be the same.

Mr. BROOM seconded him.

Mr. GORHAM. This would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the Senates in the States are allowed more than those of the other House.

Mr. DICKINSON withdrew his motion.

It was moved and agreed, to amend the section by adding, "to be ascertained by law."

The section (Article 6, Section 10,) as amended, was then agreed to, *nem. con.*

Adjourned.

WEDNESDAY, AUGUST 15TH.

In Convention,—Article, 6, Section 11, was agreed to, *nem. con.*

Article 6, Section 12, was then taken up.

Mr. STRONG moved to amend the article so as to read, "Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of the Government, which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases."

Colonel MASON seconds the motion. He was extremely earnest to take this power from the Senate, who he said, could already sell the whole country by means of treaties.

Mr. GORHAM urged the amendment as of great importance. The Senate will first acquire the habit of preparing money-bills, and then the practice will grow into an exclusive right of preparing them.

Mr. GOUVERNEUR MORRIS opposed it, as unnecessary and inconvenient.

Mr. WILLIAMSON. Some think this restriction on the Senate essential to liberty ; others think it of no importance. Why should not the former be indulged ? He was for an efficient and stable government ; but many would not strengthen the Senate, if not restricted in the case of money-bills. The friends of the Senate, would therefore, lose more than they would gain, by refusing to gratify the other side. He moved to postpone the subject, till the powers of the Senate should be gone over.

Mr. RUTLEDGE seconds the motion.

Mr. MERCER should hereafter be against returning to a reconsideration of this section. He contended (alluding to Mr. MASON's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department ; adding, that treaties would not be final, so as to alter the laws of the land, till ratified by legislative authority. This was the case of treaties in Great Britain ; particularly the late treaty of commerce with France.

Colonel MASON did not say that a treaty would repeal a law ; but that the Senate, by means of treaties, might alienate territory, &c., without legislative sanction. The cessions of the British Islands in the West Indies, by treaty alone, were an example. If Spain should possess herself of Georgia, therefore, the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On the question for postponing Sect. 12, it passed in the affirmative,—

New Hampshire, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye — 6 ; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no — 5.

Mr. MADISON moved the following amendment of Article 6, Sect. 13 : “Every bill which shall have passed the two

Houses shall, before it become a law, be severally presented to the President of the United States, and to the Judges of the Supreme Court, for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider the bill: but if, after such reconsideration, two-thirds of that House, when either the President, or a majority of the judges shall object, or three-fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other House; by which it shall likewise be reconsidered, and, if approved by two-thirds, or three-fourths of the other House, as the case may be, it shall become a law."

Mr. WILSON seconds the motion.

Mr. PINCKNEY opposed the interference of the Judges in the legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. MERCER heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative; but equally so that it ought to be independent of that department. The true policy of the axiom is, that legislative usurpation and oppression may be obviated. He disapproved of the doctrine, that the Judges, as expositors of the Constitution, should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable.

Mr. GERRY. This motion comes to the same thing with what has been already negatived.

On the question on the motion of Mr. MADISON, —

Delaware, Maryland, Virginia, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, Georgia, no — 8.

Mr. GOUVERNEUR MORRIS regretted that something like

the proposed check could not be agreed to. He dwelt on the importance of public credit, and the difficulty of supporting it without some strong barrier against the instability of legislative assemblies. He suggested the idea of requiring three-fourths of each House to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power, as the Executive was now to be constituted (elected by Congress). The Legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the National Legislature formed, and a war was now to break out, this ruinous expedient would again be resorted to, if not guarded against. The requiring three-fourths to repeal would, though not a complete remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Mr. DICKINSON was strongly impressed with the remark of Mr. MERCER, as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was, at the same time, at a loss what expedient to substitute. The Justiciary of Arragon, he observed, became by degrees the law-giver.

Mr. GOUVERNEUR MORRIS suggested the expedient of an absolute negative in the Executive. He could not agree that the Judiciary, which was part of the Executive, should be bound to say, that a direct violation of the Constitution was law. A control over the Legislature might have its inconveniences. But view the danger on the other side. The most virtuous citizens will often, as members of a Legislative body, concur in measures which afterwards, in their private capacity, they will be ashamed of. Encroachments of the popular branch of the Government ought to be guarded against. The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsyl-

vania points out the many invasions of the Legislative department on the Executive, numerous as the latter* is, within the short term of seven years; and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments against it. If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome, where the aristocracy overturned the throne, the consequence was different. He enlarged on the tendency of the Legislative authority to usurp on the Executive, and wished the section to be postponed, in order to consider of some more effectual check than requiring two-thirds only to overrule the negative of the Executive.

Mr. SHERMAN. Can one man be trusted better than all the others, if they all agree? This was neither wise nor safe. He disapproved of judges meddling in politics and parties. We have gone far enough in forming the negative, as it now stands.

Mr. CABBOLL. When the negative to be overruled by two-thirds only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, seventeen in the larger, and eight in the smaller, house, might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controlling power, however, of the Executive, could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Mr. GOBHAM saw no end to these difficulties and postponements. Some could not agree to the form of government, before the powers were defined. Others could not agree to the powers till it was seen how the government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixed in the United States.

* The Executive consisted at that time of about twenty members.

Mr. WILSON, after viewing the subject with all the coolness and attention possible, was most apprehensive of a dissolution of the Government from the Legislature swallowing up all the other powers. He remarked, that the prejudices against the Executive resulted from a misapplication of the adage, that the parliament was the palladium of liberty. Where the Executive was really formidable, *king* and *tyrant* were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up, in the Parliament than had been exercised by the monarch. He insisted that we had not guarded against the danger on this side, by a sufficient self-defensive power, either to the Executive or Judiciary Department.

Mr. RUTLEDGE, was strenuous against postponing; and complained much of the tediousness of the proceedings.

Mr. ELLSWORTH held the same language. We grow more and more sceptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative, — Delaware and Maryland only being in the affirmative

Mr. WILLIAMSON moved to change, "two-thirds of each House," into "three-fourths," as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the President alone, to admitting the Judges into the business of legislation.

Mr. WILSON seconds the motion; referring to and repeating the ideas of Mr. CARROLL.

On this motion for three-fourths instead of two-thirds; it passed in the affirmative, — Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye — 6; New Hampshire, Massachusetts, New Jersey, Georgia, no — 4; Pennsylvania, divided.

Mr. MADISON, observing that if the negative of the President was confined to *bills*, it would be evaded by acts under

the form and name of Resolutions, votes, etc., proposed that "or resolve," should be added after "bill," in the beginning of section 13, with an exception as to votes of adjournment, &c. After a short and rather confused conversation on the subject, the question was put and rejected, the votes being as follows,—Massachusetts, Delaware, North Carolina, aye — 3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no — 8.

"Ten days (Sundays excepted)," instead of "seven," were allowed to the President for returning bills with his objections,—New Hampshire and Massachusetts only voting against it.

The thirteenth Section of Article 6, as amended was then agreed to.

Adjourned.

THURSDAY, AUGUST 16TH.

In Convention,—Mr. RANDOLPH, having thrown into a new form the motion putting votes, resolutions, &c. on a footing with bills, renewed it as follows — "Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment, and in the cases hereinafter mentioned) shall be presented to the President for his revision; and before the same shall have force, shall be approved by him, or, being disapproved by him, shall be repassed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

Mr. SHERMAN thought it unnecessary, except as to votes taking money out of the treasury, which might be provided for in another place.

On the question as moved by Mr. RANDOLPH, it was agreed to,—New Hampshire, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Caro-

lina, Georgia, aye — 9; New Jersey, no — 1; Massachusetts, not present.

The amendment was made a fourteenth section of Article 6.

Article 7, Sect. 1, was then taken up.

Mr. L. MARTIN asked, what was meant by the Committee of Detail in the expression,—“*duties*,” and “*imposts*.” If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.

Mr. WILSON. *Duties* are applicable to many objects to which the word *imposts* does not relate. The latter are appropriated to commerce, the former extend to a variety of objects, as stamp duties, &c.

Mr. CARROLL reminded the Convention of the great difference of interests among the States; and doubts the propriety, in that point of view, of letting a majority be a quorum.

Mr. MASON urged the necessity of connecting with the powers of levying taxes, duties, &c., the prohibition in Article 6, Sect. 4, “that no tax shall be laid on exports.” He was unwilling to trust to its being done in a future article. He hoped the Northern States did not mean to deny the Southern this security. It would hereafter be as desirable to the former, when the latter should become the most populous. He professed his jealousy for the productions of the Southern, or, as he called them, the staple States. He moved to insert the following amendment: “provided, that no tax, duty, or imposition, shall be laid by the Legislature of the United States on articles exported from any State.”

Mr. SHERMAN had no objection to the proviso here, other than that it would derange the parts of the Report as made by the Committee, to take them in such an order.

Mr. RUTLEDGE. It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent parts relating to negroes should also be agreed to.

Mr. **GOUVERNEUR MORRIS** considered such a proviso as inadmissible any where. It was so radically objectionable, that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without taxing exports; and that taxes on exports would be often the most easy and proper of the two.

Mr. **MADISON**. First, the power of laying taxes on exports is proper in itself; and as the States cannot with propriety exercise it separately, it ought to be vested in them collectively. Secondly, it might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets, as tobacco, &c. The contract between the French Farmers-General and Mr. **MORRIS**, stipulating that, if taxes should be laid in America on the export of tobacco, they should be paid by the Farmers, showed that it was understood by them, that the price would be thereby raised in America, and consequently the taxes be paid by the European consumer. Thirdly, it would be unjust to the States whose produce was exported by their neighbours, to leave it subject to be taxed by the latter. This was a grievance which had already filled New Hampshire, Connecticut, New Jersey, Delaware, and North Carolina with loud complaints, as it related to imports, and they would be equally authorized by taxes by the States on exports. Fourthly, the Southern States, being most in danger and most needing naval protection, could the less complain, if the burthen should be somewhat heaviest on them. And finally, we are not providing for the present moment only; and time will equalize the situation of the States in this matter. He was, for these reasons, against the motion.

Mr. **WILLIAMSON** considered the clause proposed against taxes on exports, as reasonable and necessary.

Mr. **ELLSWORTH** was against taxing exports; but thought the prohibition stood in the most proper place, and was against deranging the order reported by the Committee.

Mr. WILSON was decidedly against prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving New Jersey, Connecticut, &c., any longer subject to the exactions of their commercial neighbours.

Mr. GERRY thought the Legislature could not be trusted with such a power. It might ruin the country. It might be exercised partially, raising one and depressing another part of it.

Mr. GOUVERNEUR MORRIS. However the Legislative power may be formed, it will, if disposed, be able to ruin the country. He considered the taxing of exports to be in many cases highly politic. Virginia has found her account in taxing tobacco. All countries having peculiar articles tax the exportation of them, — as France her wines and brandies. A tax here on lumber would fall on the West Indies, and punish their restrictions on our trade. The same is true of live stock, and in some degree of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects, and you push them into revolts.

Mr. MERCER was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation, The States had now a right where their situation permitted, to tax both the imports and the exports of their uncommercial neighbours. It was enough for them to sacrifice one half of it. It had been said the Southern States had most need of naval protection. The reverse was the case. Were it not for promoting the carrying trade of the Northern States, the Southern States could let the trade go into foreign bottoms, where it would not need our protection. Virginia, by taxing her tobacco, had given an advantage to that of Maryland.

Mr. SHERMAN. To examine and compare the States in relation to imports and exports, will be opening a boundless

field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports, except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial States was guarded against by the power to regulate trade between the States. As to compelling foreigners, that might be done by regulating trade in general. The Government would not be trusted with such a power. Objections are most likely to be excited by considerations relating to taxes and money. A power to tax exports would shipwreck the whole.

Mr. CARROLL was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed, that the question concerning exports should lie over for the place in which the exception stood in the Report,—Maryland alone voting against it.

Article 7, Section 1, clause first, was then agreed to — Mr. GERRY alone answering, no.

The clause for regulating commerce with foreign nations, &c., was agreed to, *nem. con.*

The several clauses,—for coining money — for regulating foreign coin — for fixing the standard of weights and measures,—were agreed to, *nem. con.*

On the clause, “To establish post offices,”—

Mr. GERRY moved to add, “and post-roads.”

Mr. MERCER seconded ; and on the question,

Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, aye — 6 ; New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, no — 5.

Mr. GOUVERNEUR MORRIS moved to strike out, “and emit bills on the credit of the United States.” If the United States had credit, such bills would be unnecessary ; if they had not, unjust and useless.

Mr. BUTLER seconds the motion.

Mr. MADISON. Will it not be sufficient to prohibit the making them a *tender*? This will remove the temptation to emit them with unjust views. And promissory notes, in that shape, may in some emergencies be best.

Mr. GOUVERNEUR MORRIS. Striking out the words will leave room still for notes of a *responsible* minister, which will do all the good without the mischief. The moneyed interest will oppose the plan of government, if paper emissions be not prohibited.

Mr. GORHAM was for striking out without inserting any prohibition. If the words stand, they may suggest and lead to the measure.

Mr. MASON had doubts on the subject. Congress, he thought, would not have the power, unless it were expressed. Though he had a mortal hatred to paper-money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr. GORHAM. The power, as far as it will be necessary, or safe, is involved in that of borrowing.

Mr. MERCER was a friend to paper-money, though in the present state and temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government, to deny it a discretion on this point. It was impolitic, also, to excite the opposition of all those who were friends to paper-money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of citizens.

Mr. ELLSWORTH thought this a favourable moment, to shut and bar the door against paper-money. The mischiefs of the various experiments which had been made were now fresh in the public mind, and had excited the disgust of all

the respectable part of America. By withholding the power from the new Government, more friends of influence would be gained to it than by almost anything else. Paper-money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good.

Mr. RANDOLPH, notwithstanding his antipathy to paper-money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

Mr. WILSON. It will have a most salutary influence on the credit of the United States, to remove the possibility of paper-money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

Mr. BUTLER remarked, that paper was a legal tender in no country in Europe. He was urgent for disarming the government of such a power.

Mr. MASON was still averse to tying the hands of the Legislature *altogether*. If there was no example in Europe, as just remarked, it might be observed, on the other side, that there was none in which the Government was restrained on this head.

Mr. READ thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelation.

Mr. LANGDON had rather reject the whole plan, than retain the three words, "and emit bills."

On the motion for striking out,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia,* North Carolina, South Carolina, Georgia, aye — 9; New Jersey, Maryland, no — 2.

The clause for borrowing money was agreed to, *nem. con.*

Adjourned.

* This vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. MADISON, who became satisfied that striking out the words would not disable the Government from the use of public notes, as far as they could be safe and proper; and would only cut off the pretext for a *paper-currency* and particularly for making the bills a *tender*, either for public or private debts.

FRIDAY, AUGUST 17TH.

In Convention,—Article 7, Sect. 1, was resumed.

On the clause, “to appoint a Treasurer by ballot,”—

Mr. GORHAM moved to insert “joint” before ballot, as more convenient, as well as reasonable, than to require the separate concurrence of the Senate.

Mr. PINCKNEY seconds the motion.

Mr. SHERMAN opposed it, as favoring the larger States.

Mr. READ moved to strike out the clause, leaving the appointment of a Treasurer, as of other officers, to the Executive. The Legislature was an improper body for appointments. Those of the State Legislatures were a proof of it. The Executive being responsible, would make a good choice.

Mr. MERCEER seconds the motion of Mr. READ.

On the motion for inserting the word “joint” before “ballot,”—New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 7; Connecticut, New Jersey, Maryland, no — 3.

Col. MASON, in opposition to Mr. READ’s motion, desired it might be considered, to whom the money would belong; if to the people, the Legislature, representing the people, ought to appoint the keepers of it.

On striking out the clause, as amended, by inserting “joint,”—Pennsylvania, Delaware, Maryland, South Carolina, aye — 4; New Hampshire, Massachusetts, Connecticut, Virginia, North Carolina, Georgia, no — 6.

The clause, “to constitute inferior tribunals,” was agreed to *nem. con.*; as also the clause, “to make rules as to captures on land and water.”

The clause, “to declare the law and punishment of piracies and felonies, &c. &c.” being considered —

Mr. MADISON moved to strike out, “and punishment, &c.” after the words “to declare the law.”

Mr. MASON doubts the safety of it, considering the

strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases, wholly from the States.

Mr. GOUVERNEUR MORRIS thought it would be necessary to extend the authority further, so as to provide for the punishment of counterfeiting in general. Bills of exchange, for example, might be forged in one State, and carried into another.

It was suggested by some other member, that *foreign* paper might be counterfeited by citizens; and that it might be politic to provide by national authority for the punishment of it.

Mr. RANDOLPH did not conceive that expunging "the punishment" would be a constructive exclusion of the power. He doubted only the efficacy of the word "declare."

Mr. WILSON was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws though necessary in enacting and expounding them.

On the question for striking out "and punishment," as moved by Mr. MADISON, — Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 7; New Hampshire, Connecticut, Maryland, no — 3.

Mr. GOUVERNEUR MORRIS moved to strike out "declare the law," and insert "punish," before "piracies;" and on the question, — New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, aye — 7; Connecticut, Virginia, North Carolina, no — 3.

Mr. MADISON and Mr. RANDOLPH moved to insert "define and," before "punish."

Mr. WILSON thought "felonies" sufficiently defined by common law.

Mr. DICKINSON concurred with Mr. WILSON.

Mr. MERCER was in favor of the amendment.

Mr. MADISON. Felony at common law is vague. It is also defective. One defect is supplied by Statute of Anne,

as to running away with vessels, which at common law was a breach of trust only. Besides, no foreign law should be a standard, further than it is expressly adopted. If the laws of the States were to prevail on this subject, the citizens of different States would be subject to different punishments for the same offence at sea. There would be neither uniformity nor stability in the law. The proper remedy for all these difficulties was, to vest the power proposed by the term "define," in the National Legislature.

Mr. GOUVERNEUR MORRIS would prefer *designate* to *define*, the latter being, as he conceived, limited to the pre-existing meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies and piracies.

The motion of Mr. MADISON and Mr. RANDOLPH was agreed to.

Mr. ELLSWORTH enlarged the motion, so as to read, "to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the United States, and offences against the laws of nations," which was agreed to, *nem. con.*

The clause, "to subdue a rebellion in any State, on the application of its Legislature," was next considered.

Mr. PINCKNEY moved to strike out, "on the application of its Legislature."

Mr. GOUVERNEUR MORRIS seconds.

Mr. L. MARTIN opposed it, as giving a dangerous and unnecessary power. The consent of the State ought to precede the introduction of any extraneous force whatever.

Mr. MERCER supported the opposition of Mr. MARTIN.

Mr. ELLSWORTH proposed to add, after "legislature," "or Executive."

Mr. GOUVERNEUR MORRIS. The Executive may possibly be at the head of the rebellion. The General Government should enforce obedience in all cases where it may be necessary.

Mr. ELLSWORTH. In many cases the General Government ought not to be able to interpose, unless called upon. He was willing to vary his motion, so as to read, "or without it, when the Legislature cannot meet."

Mr. GEBBY was against letting loose the myrmidons of the United States on a State, without its own consent. The States will be the best judges in such cases. More blood would have been spilt in Massachusetts, in the late insurrection, if the general authority had intermeddled.

Mr. LANGDON was for striking out, as moved by Mr. PINCKNEY. The apprehension of the National force will have a salutary effect, in preventing insurrections.

Mr. RANDOLPH. If the National Legislature is to judge whether the State Legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of Mr. PINCKNEY.

Mr. GOUVERNEUR MORRIS. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The Legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add, "or without it [application] when the Legislature cannot meet," it was agreed to,—

New Hampshire, Connecticut, Virginia, South Carolina, Georgia, aye — 5; Massachusetts, Delaware, Maryland, no 3; Pennsylvania, North Carolina, divided.

Mr. MADISON and Mr. DICKINSON moved to insert, as explanatory, after "State," "against the Government thereof." There might be a rebellion against the United States. The motion was agreed to, *nem. con.*

On the clause as amended,—

New Hampshire, Connecticut, Virginia, Georgia, aye — 4; Delaware, Maryland, North Carolina, South Carolina, no — 4; Massachusetts,* Pennsylvania, absent. So it was lost.

On the clause, "to make war,"—

* In the printed Journal, Massachusetts, no.

Mr. PINCKNEY opposed the vesting this power in the Legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to the large States, the power will, notwithstanding, be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

Mr. BUTLER. The objections against the Legislature lie in a great degree against the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the nation will support it.

Mr. MADISON and Mr. GERRY moved to insert "*declare*," striking out "*make*" war; leaving to the Executive the power to repel sudden attacks.

Mr. SHERMAN thought it stood very well. The Executive should be able to repel, and not to commence, war. "*Make*" is better than *declare*, the latter narrowing the power too much.

Mr. GERRY never expected to hear, in a republic, a motion to empower the Executive alone to declare war.

Mr. ELLSWORTH. There is a material difference between the cases of making *war* and making *peace*. It should be more easy to get out of war, than in to it. War also is a simple and overt declaration, peace attended with intricate and secret negotiations.

Mr. MASON was against giving the power of war to the Executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging, rather than facilitating war; but for facilitating peace. He preferred "*declare*" to "*make*."

On the motion to insert "*declare*" in place of "*make*" it was agreed to,—

Connecticut,* Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 8; New Hampshire, no — 1; Massachusetts, absent.

Mr. PINCKNEY's motion to strike out the whole clause, was disagreed to, without call of States.

Mr. BUTLER moved to give the Legislature the power of peace, as they were to have that of war.

Mr. GERRY seconds him. Eight Senators may possibly exercise the power, if vested in that body; and fourteen, if all should be present; and may consequently give up part of the United States. The Senate are more liable to be corrupted by an enemy, than the whole Legislature.

On the motion for adding "and peace," after "war,"— it was unanimously negatived.

Adjourned.

SATURDAY, AUGUST 18TH.

In Convention,— Mr. MADISON submitted, in order to be referred to the Committee on Detail, the following powers, as proper to be added to those of the General Legislature:

"To dispose of the unappropriated lands of the United States.

"To institute temporary governments for new States arising therein.

"To regulate affairs with the Indians, as well within as without the limits of the United States.

"To exercise exclusively legislative authority at the seat of the General Government, and over a district around the same not exceeding ——— square miles; the consent of the Legislature of the State or States, comprising the same, being first obtained.

"To grant charters of corporations in cases where the

* Connecticut voted in the negative; but on the remark by Mr. King, that "make" war might be understood to "conduct" it, which was an Executive function, Mr. Ellsworth gave up his objection, and the vote was changed to *aye*.

public good may require them, and the authority of a single State may be incompetent.

“To secure to literary authors their copy-rights for a limited time.

“To establish a university.

“To encourage by premiums and provisions the advancement of useful knowledge and discoveries.

“To authorize the Executive to procure, and hold for the use of the United States, landed property for the erection of forts, magazines, and other necessary buildings.”

These propositions were referred to the Committee of Detail which had prepared the Report; and at the same time the following, which were moved by Mr. PINCKNEY — in both cases unanimously:

“To fix and permanently establish the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.

“To establish seminaries for the promotion of literature and the arts and sciences.

“To grant charters of incorporation.

“To grant patents for useful inventions.

“To secure to authors exclusive rights for a certain time.

“To establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, trades, and manufactures.

“That funds which shall be appropriated for the payment of public creditors, shall not during the time of such appropriation, be diverted or applied to any other purpose, and that the Committee prepare a clause or clauses for restraining the Legislature of the United States from establishing a perpetual revenue.

“To secure the payment of the public debt.

“To secure all creditors under the new Constitution from a violation of the public faith when pledged by the authority of the Legislature.

“To grant letters of marque and reprisal.

“To regulate stages on the post-roads.”

Mr. MASON introduced the subject of regulating the militia. He thought such a power necessary to be given to the General Government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The militia ought, therefore, to be more effectually prepared for the public defence. Thirteen States will never concur in any one system, if the disciplining of the militia be left in their hands. If they will give up the power over the whole, they probably will over a part as a select militia. He moved, as an addition to the propositions just referred to the Committee of Detail, and to be referred in like manner, “a power to regulate the militia.”

Mr. GERRY remarked, that some provision ought to be made in favor of public securities, and something inserted concerning letters of marque, which he thought not included in the power of war. He proposed that these subjects should also go to a Committee.

Mr. RUTLEDGE moved to refer a clause, “that funds appropriated to public creditors should not be diverted to other purposes.”

Mr. MASON was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue, which must of necessity subvert the liberty of any country. If it be objected to on the principle of Mr. RUTLEDGE's motion, that public credit may require perpetual provisions, that case might be excepted; it being declared that in other cases no taxes should be laid for a longer term than —— years. He considered the caution observed in Great Britain on this point, as the palladium of public liberty.

Mr. RUTLEDGE's motion was referred. He then moved that a Grand Committee be appointed to consider the necessity and expediency of the United States assuming all the State debts. A regular settlement between the Union

and the several States would never take place. The assumption would be just, as the State debts were contracted in the common defence. It was necessary, as the taxes on imports, the only sure source of revenue, were to be given up to the Union. It was politic, as by disburthening the people of the State debts, it would conciliate them to the plan.

Mr. KING and Mr. PINCKNEY seconded the motion.

Col. MASON interposed a motion, that the Committee prepare a clause for restraining perpetual revenue, which was agreed to, *nem. con.*

Mr. SHERMAN thought it would be better to authorize the Legislature to assume the State debts, than to say positively it should be done. He considered the measure as just, and that it would have a good effect to say something about the matter.

Mr. ELLSWORTH differed from Mr. SHERMAN. As far as the State debts ought in equity to be assumed, he conceived that they might and would be so.

Mr. PINCKNEY observed that a great part of the State debts were of such a nature that, although in point of policy and true equity they ought to be, yet would they not be, viewed in the light of Federal expenditures.

Mr. KING thought the matter of more consequence than Mr. ELLSWORTH seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy which had been mentioned, it might be remarked, that the State creditors, an active and formidable party, would otherwise be opposed to a plan which transferred to the Union the best resources of the States, without transferring the State debts at the same time. The State creditors had generally been the strongest foes to the impost plan. The State debts probably were of greater amount, than the Federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a Committee.

On Mr. RUTLEDGE's motion, that a committee be appointed

to consider of the assumption, &c., it was agreed to,— Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, Georgia, aye—6; New Hampshire, New Jersey, Delaware, Maryland, no—4; Pennsylvania, divided.

Mr. GERRY's motion to provide for public securities, for stages on post roads, and for letters of marque and reprisal, was committed, *nem. con.*

Mr. KING suggested that all unlocated lands of particular States ought to be given up if State debts were to be assumed. Mr. WILLIAMSON concurred in the idea.

A Grand Committee was appointed consisting of Mr. LANGDON, Mr. KING, Mr. SHERMAN, Mr. LIVINGSTON, Mr. CLYMER, Mr. DICKINSON, Mr. MCHENRY, Mr. MASON, Mr. WILLIAMSON, Mr. C. C. PINCKNEY, and Mr. BALDWIN.

Mr. RUTLEDGE remarked on the length of the session, the probable impatience of the public, and the extreme anxiety of many members of the Convention to bring the business to an end; concluding with a motion that the Convention meet henceforward, precisely at ten o'clock, A. M.; and that, precisely at four o'clock, P. M., the President adjourn the House without motion for the purpose; and that no motion to adjourn sooner be allowed.

On this question—New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—9; Pennsylvania, Maryland, no—2.

Mr. ELLSWORTH observed that a Council had not yet been provided for the President. He conceived there ought to be one. His proposition was, that it should be composed of the President of the Senate, the Chief Justice, and the Ministers as they might be established for the departments of foreign and domestic affairs, war, finance and marine; who should advise but not conclude the President.

Mr. PINCKNEY wished the proposition to lie over, as notice had been given for a like purpose by Mr. GOUVERNEUR MORRIS, who was not then on the floor. His own idea was, that the President should be authorized to call for

advice, or not, as he might choose. Give him an able Council, and it will thwart him; a weak one, and he will shelter himself under their sanction.

Mr. GERRY was against letting the heads of the Departments, particularly of finance, have any thing to do in business connected with legislation. He mentioned the Chief Justice also, as particularly exceptionable. These men will also be so taken up with other matters, as to neglect their own proper duties.

Mr. DICKINSON urged that the great appointments should be made by the Legislature, in which case they might properly be consulted by the Executive, but not if made by the Executive himself.

This subject by general consent lay over; and the House proceeded to the clause, "to raise armies."

Mr. GORHAM moved to add, "and support," after "raise." Agreed to, *nem. con.*; and then the clause was agreed to, *nem. con.*, as amended.

Mr. GERRY took notice that there was no check here against standing armies in time of peace. The existing Congress is so constructed that it cannot of itself maintain an army. This would not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making against it. [He seemed to allude to the activity of the Governor of New York at this crisis in disciplining the militia of that State.] He thought an army dangerous in time of peace, and could never consent to a power to keep up an indefinite number. He proposed that there should not be kept up in time of peace more than ——— thousand troops. His idea was, that the blank should be filled with two or three thousand.

Instead of "to build and equip fleets," "to provide and maintain a Navy," was agreed to, *nem. con.*, as a more convenient definition of the power.

A clause, "to make rules for the government and regu-

lation of the land and naval forces," was added from the existing Articles of Confederation.

Mr. L. MARTIN and Mr. GERBY now regularly moved, "provided that in time of peace the army shall not consist of more than —— thousand men."

General PINCKNEY asked, whether no troops were ever to be raised until an attack should be made on us?

Mr. GERBY. If there be no restriction, a few States may establish a military government.

Mr. WILLIAMSON reminded him of Mr. MASON's motion for limiting the appropriation of revenue as the best guard in this case.

Mr. LANGDON saw no room for Mr. GERBY's distrust of the representatives of the people.

Mr. DAYTON. Preparations for war are generally made in time of peace; and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of Mr. MARTIN and Mr. GERBY was disagreed to, *nem. con.*

Mr. MASON moved, as an additional power, "to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers." He considered uniformity as necessary in the regulation of the militia, throughout the Union.

General PINCKNEY mentioned a case, during the war, in which a dissimilarity in the militia of different States had produced the most serious mischiefs. Uniformity was essential. The States would never keep up a proper discipline of the militia.

Mr. ELLSWORTH was for going as far, in submitting the militia to the General Government, as might be necessary; but thought the motion of Mr. MASON went too far. He moved, "that the militia should have the same arms and exercise, and be under rules established by the General Government when in actual service of the United States; and when States neglect to provide regulations for militia, it

should be regulated and established by the Legislature of the United States." The whole authority over the militia ought by no means to be taken away from the States, whose consequence would pine away to nothing after such a sacrifice of power. He thought the general authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the States to give the militia out of their hands.

Mr. SHERMAN seconds the motion.

Mr. DICKINSON. We are come now to a most important matter — that of the sword. His opinion was, that the States never would, nor ought to, give up all authority over the militia. He proposed to restrain the general power to one-fourth part at a time, which by rotation would discipline the whole militia.

Mr. BUTLER urged the necessity of submitting the whole militia to the general authority, which had the care of the general defence.

Mr. MASON had suggested the idea of a select militia. He was led to think that would be, in fact, as much as the General Government could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power to make laws for regulating and disciplining the militia, not exceeding one-tenth part in any one year, and reserving the appointment of officers to the States.

General PINCKNEY renewed Mr. MASON's original motion. For a part to be under the General and a part under the State Governments, would be an incurable evil. He saw no room for such distrust of the General Government.

Mr. LANGDON seconds General PINCKNEY's renewal. He saw no more reason to be afraid of the General Government, than of the State Governments. He was more apprehensive of the confusion of the different authorities on this subject, than of either.

Mr. MADISON thought the regulation of the militia

naturally appertaining to the authority charged with the public defence. It did not seem, in its nature, to be divisible between two distinct authorities. If the States would trust the General Government with a power over the public treasury, they would, from the same consideration of necessity, grant it the direction of the public force. Those who had a full view of the public situation, would, from a sense of the danger, guard against it. The States would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

Mr. ELLSWORTH considered the idea of a select militia as impracticable ; and if it were not, it would be followed by ruinous declension of the great body of the militia. The States would never submit to the same militia laws. Three or four shillings as a penalty will enforce obedience better in New England, than forty lashes in some other places.

Mr. PINCKNEY thought the power such an one as could not be abused, and that the States would see the necessity of surrendering it. He had, however, but a scanty faith in militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.*

Mr. SHEPHERD took notice that the States might want their militia for defence against invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

Mr. GERRY thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the General Government as some

* This had reference to the disorders, particularly, that had occurred in Massachusetts, which had called for the interposition of the Federal troops.

gentlemen possessed, and believed it would be found that the States have not.

Col. MASON thought there was great weight in the remarks of Mr. SHERMAN, and moved an exception to his motion, "of such part of the militia as might be required by the States for their own use."

Mr. READ doubted the propriety of leaving the appointment of the militia officers to the States. In some States, they are elected by the Legislatures; in others, by the people themselves. He thought at least an appointment by the State Executives ought to be insisted on.

On the question for committing to the Grand Committee last appointed, the latter motion of Col. MASON, and the original one revived by General PINCKNEY,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—8; Connecticut, New Jersey, no—2; Maryland, divided.

Adjourned.

MONDAY, AUGUST 20TH.

In Convention,—Mr. PINCKNEY submitted to the House, in order to be referred to the Committee of Detail, the following propositions:

"Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the Legislature may be sitting and during the time of its session, shall threaten any of its members for any thing said or done in the House; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend either of the Houses, in his way going or returning; or who shall rescue any person arrested by their order.

"Each branch of the Legislature, as well as the Supreme Executive, shall have authority to require the opinions of

the Supreme Judicial Court upon important questions of law, and upon solemn occasions.

The privileges and benefit of the writ of Habeas Corpus shall be enjoyed in this Government, in the most expeditious and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding —— months.

“The liberty of the press shall be inviolably preserved.

“No troops shall be kept up in time of peace, but by consent of the Legislature.

“The military shall always be subordinate to the civil power; and no grants of money shall be made by the Legislature for supporting military land forces, for more than one year at a time.

“No soldier shall be quartered in any house, in time of peace, without consent of the owner.

“No person holding the office of President of the United States, a Judge of their Supreme Court, Secretary for the department of Foreign affairs, of Finance, of Marine, of War, or of —— shall be capable of holding at the same time any other office of trust or emolument, under the United States, or an individual State.

“No religious test or qualification shall ever be annexed to any oath of office, under the authority of the United States.

“The United States shall be forever considered as one body corporate and politic in law, and entitled to all the rights, privileges and immunities, which to bodies corporate do or ought to appertain.

“The Legislature of the United States shall have the power of making the Great Seal, which shall be kept by the President of the United States, or in his absence by the President of the Senate, to be used by them as the occasion may require. It shall be called the Great Seal of the United States, and shall be affixed to all laws.

“All commissions and writs shall run in the name of the United States.

“The jurisdiction of the Supreme Court shall be extended to all controversies between the United States and an individual State; or the United States and the citizens of an individual State.”

These propositions were referred to the Committee of Detail, without debate or consideration of them by the House.

Mr. GOUVERNEUR MORRIS, seconded by Mr. PINCKNEY, submitted the following propositions, which were, in like manner, referred to the Committee of Detail:

“To assist the President in conducting the public affairs, there shall be a Council of State composed of the following officers:

“1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the United States, as may in his opinion be necessary to the due administration of justice; and such as may promote useful learning and inculcate sound morality throughout the Union. He shall be President of the Council, in the absence of the President.

“2. The Secretary of Domestic affairs, who shall be appointed by the President, and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications through the United States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

“3. The Secretary of Commerce and Finance, who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare and report plans of revenue and for the regulation of expenditures, and also to recommend such things as may, in his judgment, promote the commercial interests of the United States.

“4. The Secretary of Foreign Affairs, who shall also be appointed by the President during pleasure. It shall be

his duty to correspond with all foreign ministers, prepare plans of treaties, and consider such as may be transmitted from abroad; and generally to attend to the interests of the United States in their connections with foreign powers.

"5. The Secretary of War, who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the War department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals, and the like; also in time of war to prepare and recommend plans of offence and defence.

"6. The Secretary of the Marine, who shall also be appointed during pleasure. It shall be his duty to superintend every thing relating to the Marine department, the public ships, dock-yards, naval stores and arsenals; also in the time of war to prepare and recommend plans of offence and defence.

"The President shall also appoint a Secretary of State, to hold his office during pleasure; who shall be Secretary to the Council of State, and also public Secretary to the President. It shall be his duty to prepare all public dispatches from the President which he shall countersign. The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the members. But he shall in all cases exercise his own judgment, and either conform to such opinions, or not, as he may think proper; and every officer above mentioned shall be responsible for his opinion, on the affairs relating to his particular department.

"Each of the officers above mentioned shall be liable to impeachment and removal from office, for neglect of duty, malversation or corruption."

Mr. GERRY moved, "that the Committee be instructed to report proper qualifications for the President, and a mode of trying the Supreme Judges in cases of impeachment."

The clause, "to call forth the aid of the militia, &c.,"

was postponed till report should be made as to the power over the militia, referred yesterday to the Grand Committee of eleven.

Mr. MASON moved to enable Congress "to enact sumptuary laws." No government can be maintained unless the manners be made consonant to it. Such a discretionary power may do good, and can do no harm. A proper regulation of exercises and of trade, may do a great deal; but it is best to have an express provision. It was objected to sumptuary laws, that they were contrary to nature. This was a vulgar error. The love of distinction, it is true, is natural; but the object of sumptuary laws is not to extinguish this principle, but to give it a proper direction,

Mr. ELLSWORTH. The best remedy is to enforce taxes and debts. As far as the regulation of eating and drinking can be reasonable it is provided for in the power of taxation.

Mr. GOUVERNEUR MORRIS argued that sumptuary laws tended to create a landed nobility, by fixing in the great landholders, and their posterity their present possessions.

Mr. GERRY. The law of necessity is the best sumptuary law.

On the motion of Mr. MASON as to "sumptuary laws,"—
Delaware, Maryland, Georgia, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, no — 3.

On the clause, "and to make all laws necessary and proper for carrying into execution the foregoing powers and all other powers vested, by this Constitution, in the Government of the United States, or any department or officer thereof,"—

Mr. MADISON and Mr. PINCKNEY moved to insert, between "laws" and "necessary," "and establish all offices;" it appearing to them liable to cavil, that the latter was not included in the former.

Mr. GOUVERNEUR MORRIS, Mr. WILSON, Mr. RUTLEDGE,

and Mr. ELLSWORTH, urged that the amendment could not be necessary.

On the motion for inserting "and establish all offices,"—
Massachusetts, Maryland, aye — 2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no — 9.

The clause as reported was then agreed to, *nem. con.*

Article 7, Sect. 2, concerning treason, was then taken up.

Mr. MADISON thought the definition too narrow. It did not appear to go as far as the statute of Edward III. He did not see why more latitude might not be left to the Legislature. It would be as safe as in the hands of State Legislatures; and it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

Mr. MASON was for pursuing the statute of Edward III.

Mr. GOUVERNEUR MORRIS was for giving to the Union an exclusive right to declare what should be treason. In case of a contest between the United States and a particular State, the people of the latter must, under the disjunctive terms of the clause, be traitors to one or other authority.

Mr. RANDOLPH thought the clause defective in adopting the words, "in adhering," only. The British statute adds, "giving them aid and comfort," which had a more extensive meaning.

Mr. ELLSWORTH considered the definition as the same in fact with that of the statute.

Mr. GOUVERNEUR MORRIS. "Adhering" does not go so far as "giving aid and comfort," or the latter words may be restrictive of "adhering." In either case the statute is not pursued.

Mr. WILSON held "giving aid and comfort" to be explanatory, not operative words; and that it was better to omit them.

Mr. DICKINSON thought the addition of "giving aid and comfort" unnecessary and improper; being too vague and

extending too far. He wished to know what was meant by the "testimony of two witnesses;" whether they were to be witnesses to the same overt act, or to different overt acts. He thought also, that proof of an overt act ought to be expressed as essential in the case.

Doctor JOHNSON considered "giving aid and comfort" as explanatory of "adhering," and that something should be inserted in the definition concerning overt acts. He contended that treason could not be both against the United States, and individual States; being an offense against the sovereignty, which can be but one in the same community.

Mr. MADISON remarked that "and," before "in adhering," should be changed into "or;" otherwise both offences, viz. of "levying war," and of "adhering to the enemy," might be necessary to constitute treason. He added, that, as the definition here was of treason against *the United States*, it would seem that the individual States would be left in possession of a concurrent power, so far as to define and punish treason particularly against themselves, which might involve double punishment.

It was moved that the whole clause be recommitted, which was lost, the votes being equally divided,—

New Jersey, Pennsylvania, Maryland, Virginia, Georgia, aye — 5; New Hampshire, Massachusetts, Connecticut, Delaware, South Carolina, no — 5; North Carolina, divided.

Mr. WILSON and Doctor JOHNSON moved that "or any of them," after "United States," be struck out, in order to remove the embarrassment; which was agreed to, *nem. con.*

Mr. MADISON. This has not removed the embarrassment. The same act might be treason against the United States, as here defined; and against a particular State, according to its laws.

Mr. ELLSWORTH. There can be no danger to the general authority from this; as the laws of the United States are to be apparent.

Doctor JOHNSON was still of opinion there could be no treason against a particular State. It could not, even at

present, as the Confederation now stands; the sovereignty being in the Union; much less can it be under the proposed system.

Col. MASON. The United States will have a qualified sovereignty only. The individual States will retain a part of the sovereignty. An act may be treason against a particular State, which is not so against the United States. He cited the rebellion of Bacon in Virginia, as an illustration of the doctrine.

Doctor JOHNSON. That case would amount to treason against the sovereign, the supreme sovereign, the United States.

Mr. KING observed, that the controversy relating to treason, might be of less magnitude than was supposed; as the Legislature might punish capitally under other names than treason.

Mr. GOUVERNEUR MORRIS and Mr. RANDOLPH wished to substitute the words of the British statute, and moved to postpone Article 7, Section 2, in order to consider the following substitute: "Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of treason, it is therefore ordained, declared and established, that if a man do levy war against the United States, within their territories, or be adherent to the enemies of the United States within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed, by the people of his condition, he shall be adjudged guilty of treason."

On this question, —

New Jersey, Virginia, aye, 2; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no — 8.

It was then moved to strike out "against the United States" after "treason," so as to define treason generally; and on this question, —

Massachusetts, Connecticut, New Jersey, Pennsylvania,

Delaware, Maryland, South Carolina, Georgia, aye — 8; Virginia, North Carolina, no — 2.

It was then moved to insert, after "two witnesses," the words, "to the same overt act."

Doctor FRANKLIN wished this amendment to take place. Prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

Mr. WILSON. Much may be said on both sides. Treason may sometimes be practiced in such a manner as to render proof extremely difficult — as in a traitorous correspondence with an enemy.

On the question, as to "same overt act," — New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, aye — 8; New Jersey, Virginia, North Carolina, no — 8.

Mr. KING moved to insert, before the word "power," the word, "sole," giving the United States the exclusive right to declare the punishment of treason.

Mr. BROOM seconds the motion.

Mr. WILSON. In cases of a general nature, treason can only be against the United States; and in such they should have the sole right to declare the punishment; yet in many cases it may be otherwise. The subject was, however, intricate, and he distrusted his present judgment on it.

Mr. KING. This amendment results from the vote defining treason generally, by striking out, "against the United States," which excludes any treason against particular States. These may, however, punish offences, as high misdemeanours.

On the question for inserting the word "sole," it passed in the negative, — New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, aye — 5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, no — 6.

Mr. WILSON. The clause is ambiguous now. "Sole" ought either to have been inserted, or "against the United States," to be re-instated.

Mr. KING. No line can be drawn between levying war and adhering to the enemy against the United States, and against an individual State. Treason against the latter must be so against the former.

Mr. SHERMAN. Resistance against the laws of the United States, as distinguished from resistance against the laws of a particular State, forms the line.

Mr. ELLSWORTH. The United States are sovereign on one side of the line, dividing the jurisdictions — the States on the other. Each ought to have power to defend their respective sovereignties.

Mr. DICKINSON. War or insurrection against a member of the Union must be so against the whole body ; but the Constitution should be made clear on this point.

The clause was reconsidered, *nem. con.* ; and then Mr. WILSON and Mr. ELLSWORTH moved to reinstate, “against the United States,” after “treason ;” on which question,— Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, aye — 6 ; New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, no — 5.

Mr. MADISON was not satisfied with the footing on which the clause now stood. As treason against the United States involves treason against particular States, and *vice versa*, the same act may be twice tried, and punished by the different authorities.

Mr. GOUVERNEUR MORRIS viewed the matter in the same light.

It was moved and seconded to amend the sentence to read : “Treason against the United States shall consist only in levying war against them, or in adhering to their enemies ;” which was agreed to.

Col. MASON moved to insert the words, “giving them aid and comfort,” as restrictive of “adhering to their enemies, &c.” The latter, he thought, would be otherwise too indefinite. This motion was agreed to,— Connecticut, Delaware and Georgia only being in the negative.

Mr. L. MARTIN moved to insert after conviction, &c.,

"or on confession in open court;" and on the question (the negative States thinking the words superfluous,) it was agreed to,— New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, aye — 7; Massachusetts, South Carolina, Georgia, no — 3; North Carolina, divided.

Article 7, Sect. 2, as amended, was then agreed to, *nem. con.*

Article 7, Sect. 3, was taken up. The words "white and others," were struck out, *nem. con.*, as superfluous.

Mr. ELLSWORTH moved to require the first census to be taken within "three," instead of "six," years, from the first meeting of the Legislature; and on the question,— New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye — 9; South Carolina, Georgia, no — 2.

Mr. KING asked, what was the precise meaning of *direct* taxation? No one answered.

Mr. GERRY moved to add to Article 7, Sect. 3, the following clause: "That from the first meeting of the Legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several States according to the number of their Representatives respectively in the first branch."

Mr. LANGDON. This would bear unreasonably hard on New Hampshire, and he must be against it.

Mr. CARROLL opposed it. The number of Representatives did not admit of a proportion exact enough for a rule of taxation.

Before any question, the House
Adjourned.

TUESDAY, AUGUST 21ST.

In Convention,— Governor LIVINGSTON, from the Committee of eleven to whom was referred the propositions respecting the debts of the several States, and also the mili-

tia, entered on the eighteenth inst., delivered the following report:

“ The Legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge, as well the debts of the United States, as the debts incurred by the several States, during the late war, for the common defence and general welfare.

“ To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by the United States.”

Mr. GERRY considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the United States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed, as here proposed, great opposition would be excited against the plan. He urged, also, that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

Mr. SHERMAN. It means neither more nor less than the Confederation, as it relates to this subject.

Mr. ELLSWORTH moved that the Report delivered in by Governor LIVINGSTON should lie on the table; which was agreed to, *nem. con.*

Article 7, Section 3, was then resumed.

Mr. DICKINSON moved to postpone this, in order to reconsider Article 4, Section 4, and to *limit* the number of Representatives to be allowed to the large States. Unless this were done, the small States would be reduced to entire insignificance, and encouragement given to the importation of slaves.

Mr. SHERMAN would agree to such a re-consideration; but did not see the necessity of postponing the section before the House. Mr. DICKINSON withdrew his motion.

Article 7, Section 3, was then agreed to, — ten ayes; Delaware alone, no.

Mr. SHERMAN moved to add to Section 3, the following clause: "and all accounts of supplies furnished, services performed, and moneys advanced, by the several States to the United States, or by the United States to the several States, shall be adjusted by the same rule."

Mr. GOUVERNEUR MORRIS seconds the motion.

Mr. GORHAM thought it wrong to insert this in the Constitution. The Legislature will no doubt do what is right. The present Congress have such a power, and are now exercising it.

Mr. SHERMAN. Unless some rule be expressly given, none will exist under the new system.

Mr. ELLSWORTH. Though the contracts of Congress will be binding, there will be no rule for executing them on the States; and one ought to be provided.

Mr. SHERMAN withdrew his motion, to make way for one of Mr. WILLIAMSON, to add to Section 3, — "By this rule the several quotas of the States shall be determined, in settling the expenses of the late war."

Mr. CARROLL brought into view the difficulty that might arise on this subject, from the establishment of the Constitution as intended, without the *unanimous* consent of the States.

Mr. WILLIAMSON's motion was postponed, *nem. con.*

Article 6, Section 12, which had been postponed on the fifteenth of August, was now called for by Colonel MASON, who wished to know how the proposed amendment, as to money bills, would be decided, before he agreed to any further points.

Mr. GERRY's motion of yesterday, "that previous to a census direct taxation be proportioned on the States according to the number of Representatives," was taken up. He

observed, that the principal acts of Government would probably take place within that period; and it was but reasonable that the States should pay in proportion to their share in them.

Mr. ELLSWORTH thought such a rule unjust. There was a great difference between the number of Representatives, and the number of inhabitants, as a rule in this case.

Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A State might have one Representative only, that had inhabitants enough for one and a half, or more, if fractions could be applied, and so forth. He proposed to amend the motion by adding the words, "subject to a final liquidation by the foregoing rule, when a census shall have been taken."

Mr. MADISON. The last appointment of Congress, on which the number of Representatives was founded, was conjectural and meant only as a temporary rule, till a census should be established.

Mr. READ. The requisitions of Congress had been accommodated to the impoverishment produced by the war; and to other local and temporary circumstances.

Mr. WILLIAMSON opposed Mr. GERRY's motion.

Mr. LANGDON was not here when New Hampshire was allowed three members. It was more than her share; he did not wish for them.

Mr. BUTLER contended warmly for Mr. GERRY's motion, as founded in reason and equity.

Mr. ELLSWORTH's proviso to Mr. GERRY's motion was agreed to, *nem. con.*

Mr. KING thought the power of taxation given to the Legislature rendered the motion of Mr. GERRY altogether unnecessary.

On Mr. GERRY's motion, as amended,—

Massachusetts, South Carolina, aye—2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no—8; North Carolina, divided.

On a question, "Shall Article 6, Sect. 12, with the amendment to it, proposed and entered on the fifteenth inst., as called for by Colonel MASON, be now taken up?" it passed in the negative —

[New Hampshire, Connecticut, Virginia, Maryland, North Carolina, aye — 5; Massachusetts, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, no — 6.

Mr. L. MARTIN. The power of taxation is most likely to be criticised by the public. Direct taxation should not be used but in cases of absolute necessity; and then the States will be the best judges of the mode. He therefore moved the following addition to Article 7, Sect. 3: "and whenever the Legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same according to the above rule on the several States, requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas, within a time in the said requisitions specified; and in case of any of the States failing to comply with such requisitions, then, and then only to devise and pass acts directing the mode, and authorizing the collection of the same."

Mr. McHENRY seconded the motion; there was no debate, and on the question, —

New Jersey, aye — 1; New Hampshire, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no — 8; Maryland, divided, (JENIFER and CARROLL, no.)

Article 7, Section 4, was then taken up.

Mr. LANGDON. By this section the States are left at liberty to tax exports. New Hampshire, therefore, with other non-exporting States, will be subject to be taxed by the States exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the Southern. This may be guarded against, by requiring the concurrence of two-thirds, or three fourths of the Legislature, in such cases.

Mr. ELLSWORTH. It is best as it stands. The power of regulating trade between the States will protect them against each other. Should this not be the case, the attempts of one to tax the produce of another, passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons against Congress taxing exports. First, it will discourage industry, as taxes on imports discourage luxury. Secondly, the produce of different States is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as tobacco, rice, and indigo; and a tax on these alone would be partial and unjust. Thirdly, the taxing of exports would engender incurable jealousies.

Mr. WILLIAMSON. Though North Carolina has been taxed by Virginia by a duty on twelve thousand hogsheads of her tobacco through Virginia, yet he would never agree to this power. Should it take place, it would destroy the last hope of the adoption of the plan.

Mr. GOUVERNEUR MORRIS. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting States will tax the produce of their uncommercial neighbours. The power of regulating the trade between Pennsylvania and New Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from New Jersey. The advantages possessed by a large trading city outweigh the disadvantage of a moderate duty; and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid, though in time of war such a measure may be of critical importance. Tobacco, lumber and live stock, are three objects belonging to different States of which great advantage might be made by a power to tax exports. To these may be added ginseng and masts for ships, by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia, is one of the many follies of Lord Sheffield's pamphlet. The state of the country, also, will

change, and render duties on exports, as skins, beaver and other peculiar raw materials, politic in the view of encouraging American manufactures.

Mr. BUTLER was strenuously opposed to a power over exports, as unjust and alarming to the staple States.

Mr. LANGDON suggested a prohibition on the States from taxing the produce of other States exported from their harbours.

Mr. DICKINSON. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles, and for ever. He thought it would be better to except particular articles from the power.

Mr. SHERMAN. It is best to prohibit the National Legislature in all cases. The States will never give up all power over trade. An enumeration of particular articles would be difficult, invidious, and improper.

Mr. MADISON. As we ought to be governed by national and permanent views, it is a sufficient argument for giving the power over exports, that a tax, though it may not be expedient at present, may be so hereafter. A proper regulation of exports may, and probably will, be necessary hereafter and for the same purposes as the regulation of imports, viz., for revenue, domestic manufactures, and procuring equitable regulations from other nations. An embargo may be of absolute necessity, and can be alone effectuated by the general authority. The regulation of trade between State and State cannot effect more than indirectly to hinder a State from taxing its own exports, by authorizing its citizens to carry their commodities freely into a neighbouring State, which might decline taxing exports, in order to draw into its channel the trade of its neighbours. As to the fear of disproportionate burthens on the non-exporting States, it might be remarked that it was agreed, on all hands, that the revenue would principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports, or half

from those and half from exports. The imports and exports must be pretty nearly equal in every State, and, relatively, the same among the different States.

Mr. ELLSWORTH did not conceive an embargo by the Congress interdicted by this section.

Mr. McHENRY conceived that power to be included in the power of war.

Mr. WILSON. Pennsylvania exports the produce of Maryland, New Jersey, Delaware, and will by and by, when the river Delaware is opened, export for New York. In favoring the general power over exports, therefore, he opposed the particular interest of his State. He remarked that the power had been attacked by reasoning which could only have held good, in case the General Government had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the common Government half the regulation of trade. It was his opinion, that a power over exports might be more effectual, than that over imports, in obtaining beneficial treaties of commerce.

Mr. GERRY was strenuously opposed to the power over exports. It might be made use of to compel the States to comply with the will of the General Government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised. It will enable the General Government to oppress the States, as much as Ireland is oppressed by Great Britain.

Mr. FITZSIMONS would be against a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing country. He illustrated his argument by the duties in Great Britain on wool, &c.

Col. MASON. If he were for reducing the States to mere corporations, as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a

principle often advanced and in which he concurred, that a majority, when interested, will oppress the minority. This maxim had been verified by our own Legislature [of Virginia]. If we compare the States in this point of view, the eight Northern States have an interest different from the five Southern States; and have, in one branch of the Legislature, thirty-six votes, against twenty-nine, and in the other in the proportion of eight against five. The Southern States had therefore ground for their suspicions. The case of exports was not the same with that of imports. The latter were the same throughout the States; the former very different. As to tobacco, other nations do raise it, and are capable of raising it, as well as Virginia, &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

Mr. CLYMER remarked, that every State might reason with regard to its particular productions in the same manner as the Southern States. The Middle States may apprehend an oppression of their wheat, flour, provisions, &c.; and with more reason, as these articles were exposed to a competition in foreign markets not incident to tobacco, rice, &c. They may apprehend also combinations against them, between the Eastern and Southern States, as much as the latter can apprehend them between the Eastern and middle. He moved, as a qualification of the power of taxing exports, that it should be restrained to regulations of trade, by inserting, after the word "duty," Article 7, Section 4, the words, "for the purpose of revenue."

On the question on Mr. CLYMER's motion,—

New Jersey, Pennsylvania, Delaware, aye—3; New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—8.

Mr. MADISON, in order to require two-thirds of each House to tax exports, as a lesser evil than a total prohibition, moved to insert the words, "unless by consent of two-thirds of the Legislature."

Mr. WILSON seconds; and on this question it passed in the negative,—

New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, aye — 5; Connecticut, Maryland, Virginia, (Colonel MASON, Mr. RANDOLPH, Mr. BLAIR, no; General WASHINGTON, Mr. MADISON, aye,) North Carolina, South Carolina, Georgia, no — 6.

On the question on Article 7, Section 4, as far as to “no tax shall be laid on exports,” it passed in the affirmative,—

Massachusetts, Connecticut, Maryland, Virginia, (General WASHINGTON and Mr. MADISON, no,) North Carolina, South Carolina, Georgia, aye — 7; New Hampshire, New Jersey, Pennsylvania, Delaware, no — 4.

Mr. L. MARTIN proposed to vary Article 7, Section 4, so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of Representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was inconsistent with the principles of the Revolution, and dishonourable to the American character, to have such a feature in the Constitution.

Mr. RUTLEDGE did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections, and would readily exempt the other States from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Mr. ELLSWORTH was for leaving the clause as it stands.

Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. PINCKNEY. South Carolina can never receive the plan if it prohibits the slave-trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done.

Adjourned.

WEDNESDAY, AUGUST 22d.

In Convention.—Article 7, Section 4, was resumed.

Mr. SHERMAN was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several States would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.

Col. MASON. This infernal traffic originated in the avarice of British merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves

been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily ; and the instructions given by Cromwell to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia he said had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands ; and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our Eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the States being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view, that the General Government should have power to prevent the increase of slavery.

Mr. ELLSWORTH, as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further and free those already in the country. As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we

go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. PINCKNEY. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome and other ancient States, the sanction given by France, England, Holland and other modern states. In all ages one half of mankind have been slaves. If the Southern States were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

General PINCKNEY declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal, to require South Carolina and Georgia to confederate on such unequal terms. He said the Royal assent, before the Revolution, had never been refused to South Carolina, as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection

of the clause as an exclusion of South Carolina from the Union.

Mr. BALDWIN had conceived national objects alone to be before the Convention ; not such as, like the present, were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a General Government to be the pursuit of the central states, who wished to have a vortex for every thing ; that her distance would preclude her, from equal advantage ; and that she could not prudently purchase it by yielding national powers. From this it might be understood, in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ——— ; which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

Mr. WILSON observed that if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr. GERRY thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it.

Mr. DICKINSON considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the States by the Constitution. The true question was, whether the national happiness would be promoted or impeded by the importation ; and this question ought to be left to the National Government, not to the States particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were

made unhappy by their slaves. He could not believe that the Southern States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the General Government.

Mr. WILLIAMSON stated the law of North Carolina on the subject, to-wit, that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a State licensing manumission. He thought the Southern States could not be members of the Union, if the clause should be rejected; and that it was wrong to force any thing down not absolutely necessary, and which any State must disagree to.

Mr. KING thought the subject should be considered in a political light only. If two States will not agree to the Constitution, as stated on one side, he could affirm with equal belief, on the other, that great and equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty, whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and Middle States.

Mr. LANGDON was strenuous for giving the power to the General Government. He could not, with a good conscience, leave it with the States, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves.

General PINCKNEY thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves, in any short time; but only stop them occasionally as she now does. He moved to commit the clause, that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been started.

Mr. RUTLEDGE. If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to

the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools, as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of General PINCKNEY for a commitment.

Mr. GOUVERNEUR MORRIS wished the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the Northern and Southern States.

Mr. BUTLER declared that he never would agree to the power taxing exports.

Mr. SHERMAN said it was better to let the Southern States import slaves, than to part with them, if they made that a *sine qua non*. He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the General Government, that it would be exercised. He thought it would be its duty to exercise the power.

Mr. READ was for the commitment, provided the clause concerning taxes on exports should also be committed.

Mr. SHERMAN observed that that clause had been agreed to, and therefore could not be committed.

Mr. RANDOLPH was for committing, in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sections 4 and 5, of Article 7,—Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 7; New Hampshire, Pennsylvania, Delaware, no — 3; Massachusetts absent.

Mr. PINCKNEY and Mr. LANGDON moved to commit Section 6, as to a navigation act by two-thirds of each House.

Mr. GORHAM did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered, that the Eastern States had no motive to union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southern States.

Mr. WILSON wished for a commitment, in order to reduce the proportion of votes required.

Mr. ELLSWORTH was for taking the plan as it is. This widening of opinions had a threatening aspect. If we do not agree on this middle and moderate ground, he was afraid we should lose two States, with such others as may be disposed to stand aloof; should fly into a variety of shapes and directions, and most probably into several confederations,—and not without bloodshed.

On the question for committing Section 6, as to a navigation act, to a member from each State,—New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Connecticut, New Jersey, no—2.

The committee appointed were, Messrs. LANGDON, KING, JOHNSON, LIVINGSTON, CLYMER, DICKINSON, L. MARTIN, MADISON, WILLIAMSON, C. C. PINCKNEY, and BALDWIN.

To this Committee were referred also the two clauses above mentioned of the fourth and fifth Sections of Article 7.

Mr. RUTLEDGE from the Committee to whom were referred, on the eighteenth and twentieth instant, the propositions of Mr. MADISON and Mr. PINCKNEY, made the report following:

“The Committee report, that, in their opinion, the following additions should be made to the report now before the Convention, namely:

“At the end of the first clause of the first section of the seventh article, add, ‘for payment of the debts and

necessary expenses of the United States ; provided, that no law of raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than —— years.’

“At the end of the second clause, second section, seventh article, add, ‘and with Indians, within the limits of any State, not subject to the laws thereof.’

“At the end of the sixteenth clause, of the second section, seventh article, add, ‘and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual States, in matters which respect only their internal police, or for which their individual authority may be competent.’

“At the end of the first section, tenth article, add, ‘he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.’

“After the second section, of the tenth article, insert the following as a third section : ‘The President of the United States shall have a Privy Council, which shall consist of the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established ; whose duty it shall be, to advise him in matters respecting the execution of his office, which he shall think proper to lay before them : but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.’

“At the end of the second section of the eleventh article, add, ‘the Judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives’

“Between the fourth and fifth lines of the third section

of the eleventh article, after the word 'controversies' insert, 'between the United States and an individual State, or the United States and an individual person.' "

A motion to rescind the order of the House, respecting the hours of meeting and adjourning, was negatived,— Massachusetts, Pennsylvania, Delaware, Maryland, aye — 4; New Hampshire, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no — 7.

Mr. GERRY and Mr. MCHENBY moved to insert, after the second Section, Article 7, the clause following, to wit:

"The Legislature shall pass no bill of attainder, nor any *ex post facto* law." *

Mr. GERRY urged the necessity of this prohibition, which he said was greater in the National than the State Legislature; because the number of members in the former being fewer, they were on that account the more to be feared.

Mr. GOUVERNEUR MORRIS thought the precaution as to *ex post facto* laws unnecessary; but essential as to bills of attainder.

Mr. ELLSWORTH contended that there was no lawyer, no civilian, who would not say, that *ex post facto* laws were void of themselves. It cannot, then, be necessary to prohibit them.

Mr. WILSON was against inserting any thing in the Constitution, as to *ex post facto* laws. It will bring reflections on the Constitution, and proclaim that we are ignorant of the first principles of legislation, or are constituting a government that will be so.

The question being divided, the first part of the motion relating to bills of attainder was agreed to, *nem. con.*

On the second part relating to *ex post facto* laws, —

Mr. CARROLL remarked, that experience overruled all other calculations. It had proved that, in whatever light

* The proceedings on this motion, involving the two questions on attainders and *ex post facto* laws, are not so fully stated in the printed Journal.

they might be viewed by civilians or others, the State Legislatures had passed them, and they had taken effect.

Mr. WILSON. If these prohibitions in the State Constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, but will differ as to its application,

Mr. WILLIAMSON. Such a prohibitory clause is in the Constitution of North Carolina; and though it had been violated, it has done good there, and may do good here, because the Judges can take hold of it.

Doctor JOHNSON thought the clause unnecessary, and implying an improper suspicion of the National Legislature.

Mr. RUTLEDGE was in favor of the clause.

On the question for inserting the prohibition of *ex post facto* laws,—

New Hampshire, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, aye — 7; Connecticut, New Jersey, Pennsylvania, no — 3; North Carolina, divided.

The Report of the Committee of five made by Mr. RUTLEDGE, was taken up, and then postponed, that each member might furnish himself with a copy.

The Report of the Committee of eleven, delivered in and entered on the Journal of the twenty-first instant, was then taken up; and the first clause, containing the words, "The Legislature of the United States *shall have power* to fulfil the engagements which have been entered into by Congress," being under consideration,—

Mr. ELLSWORTH argued that they were unnecessary. The United States heretofore entered into engagements by Congress, who were their agents. They will hereafter be bound to fulfil them by their new agents.

Mr. RANDOLPH thought such a provision necessary; for though the United States will be bound, the new Government will have no authority in the case, unless it be given to them.

Mr. MADISON thought it necessary to give the authority,

in order to prevent misconstruction. He mentioned the attempt made by the debtors to British subjects, to show that contracts under the old Government were dissolved by the Revolution, which destroyed the political identity of the society.

Mr. GERRY thought it essential that some explicit provision should be made on this subject; so that no pretext might remain for getting rid of the public engagements.

Mr. GOUVERNEUR MORRIS moved, by way of amendment, to substitute, "The Legislature *shall* discharge the debts, and fulfil the engagements of the United States."

It was moved to vary the amendment, by striking out "discharge the debts," and to insert "liquidate the claims;" which being negatived, the amendment moved by Mr. GOUVERNEUR MORRIS was agreed to,—all the States being in the affirmative.

It was moved and seconded, to strike the following words out of the second clause of the Report: "and the authority of training the militia according to the discipline prescribed by the United States." Before a question was taken, the House

Adjourned.

THURSDAY, AUGUST 23D.

In Convention.—The Report of the Committee of eleven, made the twenty-first of August, being taken up, and the following clause being under consideration, to wit:

"To make laws for organizing, arming and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed,"—

Mr. SHERMAN moved to strike out the last member "and authority of training," &c. He thought it unnecessary. The States will have this authority of course, if not given up.

Mr. ELLSWORTH doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time, that the term discipline was of vast extent, and might be so expounded as to include all power on the subject.

Mr. KING, by way of explanation, said that by *organizing*, the Committee meant, proportioning the officers and men — by *arming*, specifying the kind, size and calibre of arms — and by *disciplining*, prescribing the manual exercise, evolutions, &c.

Mr. SHERMAN withdrew his motion.

Mr. GERRY. This power in the United States, as explained, is making the States drill-sergeants. He had as lief let the citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the General Legislature. It would be regarded as a system of despotism.

Mr. MADISON observed, that "*arming*," as explained, did not extend to furnishing arms; nor the term "*disciplining*," to penalties, and courts martial for enforcing them.

Mr. KING added to his former explanation, that *arming* meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury; that *laws* for disciplining must involve penalties, and every thing necessary for enforcing penalties.

Mr. DAYTON moved to postpone the paragraph, in order to take up the following proposition: "To establish an uniform and general system of discipline for the militia of these States, and to make laws for organizing, arming, disciplining and governing *such part of them as may be employed in the service of the United States*; reserving to the States, respectively, the appointment of the officers, and all authority over the militia not herein given to the General Government."

On the question to postpone, in favour of this proposition, it passed in the negative, — New Jersey, Maryland, Georgia, aye—3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, no—8.

Mr. ELLSWORTH and Mr. SHERMAN moved to postpone the second clause, in favour of the following: "To establish an uniformity of arms, exercise and organization for the militia, and to provide for the government of them when called into the service of the United States."

The object of this proposition was to refer the plan for the militia to the General Government, but to leave the execution of it to the State Governments.

Mr. LANGDON said he could not understand the jealousy expressed by some gentlemen. The General and State Governments were not enemies to each other, but different institutions for the good of the people of America. As one of the people, he could say, the National Government is mine, the State Government is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used.

Mr. GERRY thought it was rather taking out of the right hand, and putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or an hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State?

Mr. DAYTON was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets, &c.

General PINCKNEY preferred the clause reported by the Committee, extending the meaning of it to the case of fines, &c.

Mr. MADISON. The primary object is to secure an effectual discipline of the militia. This will no more be done, if left to the States separately, than the requisitions

have been hitherto paid by them. The States neglect their militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety, and the less prepare its militia for that purpose; in like manner as the militia of a State would have been still more neglected than it has been, if each county had been independently charged with the care of its militia. The discipline of the militia is evidently a *national* concern, and ought to be provided for in the *national* Constitution.

Mr. L. MARTIN was confident that the States would never give up the power over the militia; and that, if they were to do so, the militia would be less attended to by the General than by the State Governments.

Mr. RANDOLPH asked, what danger there could be, that the militia could be brought into the field, and made to commit suicide on themselves. This is a power that cannot, from its nature, be abused; unless, indeed, the whole mass should be corrupted. He was for trammelling the General Government whenever there was danger, but here there could be none. He urged this as an essential point; observing that the militia were every where neglected by the State Legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the States protects the people against every apprehension that could produce murmur.

On the question on Mr. ELLSWORTH'S motion,—Connecticut, aye; the other ten States, no.

A motion was then made to recommit the second clause; which was negatived.

On the question to agree to the first part of the clause, namely, "To make laws for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States,"—

New Hampshire, Massachusetts, New Jersey, Pennsylv-

vania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Connecticut, Maryland, no — 2.

Mr. MADISON moved to amend the next part of the clause so as to read, “reserving to the States, respectively, the appointment of the officers, *under the rank of general officers.*”

Mr. SHERMAN considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the General Government, every man of discernment would rouse them by sounding the alarm to them.

Mr. GERRY. Let us at once destroy the State Governments, have an Executive for life or hereditary, and a proper Senate; and then there would be some consistency in giving full powers to the General Government: but as the States, are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention against pushing the experiment too far. Some people will support a plan of vigorous government at every risk. Others, of a more democratic cast, will oppose it with equal determination; and a civil war may be produced by the conflict.

Mr. MADISON. As the greatest danger is that of disunion of the States, it is necessary to guard against it by sufficient powers to the common government; and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good militia.

On the question to agree to Mr. MADISON'S motion, — New Hampshire, South Carolina, Georgia,* aye — 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 8.

On the question to agree to the “reserving to the States the appointment of the officers” — it was agreed to *nem. con.*

On the question on the clause, “and the authority of

* In the printed Journal, Georgia, no.

training the militia according to the discipline prescribed by the United States," —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, North Carolina, aye — 7; Delaware Virginia, South Carolina, Georgia, no — 4.

On the question to agree to Article 7, Section 7, as reported, it passed, *nem. con.*

Mr. PINCKNEY urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence; and moved to insert after Article 7, Section 7, the clause following: "No person holding any office of trust or profit under the United States shall, without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any king, prince or foreign State;" which passed, *nem. con.*

Mr. BUTLEDGE moved to amend Article 8; to read as follows: "This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several States and of their citizens and inhabitants; and the Judges of the several States shall be bound thereby in their decisions, any thing in the Constitutions or laws of the several States to the contrary notwithstanding;" which was agreed to, *nem. con.*

Article 9, being next for consideration,—

Mr. GOUVERNEUR MORRIS argued against the appointment of officers by the Senate. He considered the body as too numerous for that purpose; as subject to cabal; and as devoid of responsibility. If Judges were to be tried by the Senate, according to a late Report of a Committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Mr. WILSON was of the same opinion, and for like reasons.

Article 9, being waived, and Article 7, Section 1, being resumed,—

Mr. GOUVERNEUR MORRIS moved to strike the following

words out of the eighteenth clause, "enforce treaties," as being superfluous, since treaties were to be "laws,"— which was agreed to, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to alter the first part of the eighteenth clause, so as to read, "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions," — which was agreed to, *nem. con.*

On the question then to agree to the eighteenth clause of Article 7, Sect. 1, as amended, it passed in the affirmative, *nem. con.*

Mr. CHARLES PINCKNEY moved to add, as an additional power, to be vested in the Legislature of the United States, "to negative all laws passed by the several States interfering, in the opinion of the Legislature, with the general interests and harmony of the Union; provided that two-thirds of the members of each House assent to the same." This principle, he observed, had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large States had been removed by the equality established in the Senate.

Mr. BROOM seconded the proposition.

Mr. SHERMAN thought it unnecessary; the laws of the General Government being supreme and paramount to the State laws, according to the plan as it now stands.

Mr. MADISON proposed that it should be committed. He had been from the beginning a friend to the principle; but thought the modification might be made better.

Mr. MASON wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the sanction of the General Legislature? Is this to sit constantly in order to receive and revise the State laws? He did not mean, by these remarks, to condemn the expedient; but he was apprehensive that great objections would lie against it.

Mr. WILLIAMSON thought it unnecessary; and having

been already decided, a revival of the question was waste of time.

Mr. WILSON considered this as the key-stone wanted to complete the wide arch of government we are raising. The power of self-defence had been urged as necessary for the State Governments. It was equally necessary for the General Government. The firmness of Judges is not of itself sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void when passed.

Mr. RUTLEDGE. If nothing else, this alone would damn, and ought to damn, the Constitution. Will any State ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle.

Mr ELLSWORTH observed, that the power contended for would require, either that all laws of the State Legislatures should, previously to their taking effect, be transmitted to the General Legislature, or be repealable by the latter; or that the State Executives should be appointed by the General Government, and have a control over the State laws. If the last was meditated, let it be declared.

Mr. PINCKNEY declared, that he thought the State Executives ought to be so appointed, with such a control; and that it would be so provided if another Convention should take place.

~~Mr. GOVERNOR~~ MORRIS did not see the utility or practicability of the proposition of Mr. PINCKNEY, but wished it to be referred to the consideration of a Committee.

Mr. LANGDON was in favor of the proposition. He considered it as resolvable into the question, whether the extent of the National Constitution was to be judged of by the General or the State Governments.

On the question for commitment, it passed in the negative,—

New Hampshire, Pennsylvania, Delaware, Maryland,

Virginia, aye — 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no — 6.

Mr. PINCKNEY then withdrew his proposition.

The first clause of Article 7, Sect. 1, being so amended as to read, "The Legislature *shall* fulfil the engagements and discharge the debts of the United States; and shall have the power to lay and collect taxes, duties, imposts, and excises," was agreed to.

Mr. BUTLER expressed his dissatisfaction, lest it should compel payment, as well to the blood-suckers who had speculated on the distresses of others, as to those who had fought and bled for their country. He would be ready, he said, to-morrow, to vote for a discrimination between those classes of people; and gave notice that he would move for a re-consideration.

Article 9, Sect. 1, being resumed, to wit: "The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court"—

Mr. MADISON observed, that the Senate represented the States alone; and that for this as well as other obvious reasons, it was proper that the President should be an agent in treaties.

Mr. GOUVERNEUR MORRIS did not know that he should agree to refer the making of treaties to the Senate at all, but for the present would move to add, as an amendment to the section, after "treaties," the following: "but no treaty shall be binding on the United States which is not ratified by law."

Mr. MADISON suggested the inconvenience of requiring a legal *ratification* of treaties of alliance, for the purposes of war, &c. &c. &c.

Mr. GORHAM. Many other disadvantages must be experienced, if treaties of peace and all negotiations are to be previously ratified; and if not previously, the ministers would be at a loss how to proceed. What would be the case in Great Britain, if the King were to proceed in this

manner? American ministers must go abroad not instructed by the same authority (as will be the case with other ministers) which is to ratify their proceedings.

Mr. GOUVERNEUR MORRIS. As to treaties of alliance, they will oblige foreign powers to send their ministers here, the very thing we should wish for. Such treaties could not be otherwise made, if his amendment should succeed. In general he was not solicitous to multiply and facilitate treaties. He wished none to be made with Great Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Mr. WILSON. In the most important treaties, the King of Great Britain, being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr. MORRIS's will impose on the Senate. It was refused yesterday to permit even the Legislature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a treaty requiring all the rice of South Carolina to be sent to some one particular port.

Mr. DICKINSON concurred in the amendment, as most safe and proper, though he was sensible it was unfavourable to the little States, which would otherwise have an *equal* share in making treaties.

Doctor JOHNSON thought there was something of solecism in saying, that the acts of a minister with pleni-potentiary powers from one body should depend for ratification on another body. The example of the King of Great Britain was not parallel. Full and complete power was vested in him. If the Parliament should fail to provide the necessary means of execution, the treaty would be violated.

Mr. GORHAM, in answer to Mr. GOUVERNEUR MORRIS, said, that negotiations on the spot were not to be desired by us; especially if the whole Legislature is to have any thing to do with treaties. It will be generally in-

fluenced by two or three men, who will be corrupted by the ambassadors here. In such a government as ours, it is necessary to guard against the Government itself being seduced.

Mr. RANDOLPH, observing that almost every speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the motion of Mr. GOUVERNEUR MORRIS should be postponed ; and on this question, it was lost, the States being equally divided,

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, aye — 5 ; Massachusetts, Connecticut, North Carolina, South Carolina, Georgia, no — 5.

On Mr. GOUVERNEUR MORRIS' motion,—

Pennsylvania, aye — 1 ; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, no — 8 ; North Carolina, divided.

The several clauses of Article 9, Sect. 1, were then separately postponed, after inserting, “and other public ministers,” next after “ambassadors.”

Mr. MADISON hinted for consideration whether a distinction might not be made between different sorts of treaties ; allowing the President and Senate to make treaties eventual, and of alliance for limited terms, and requiring the concurrence of the whole Legislature in other treaties.

The first Section of Article 9, was finally referred *nem. con.*, to the Committee of five, and the House then Adjourned.

FRIDAY, AUGUST 24TH.

In Convention,—Governor LIVINGSTON, from the Committee of eleven, to whom were referred the two remaining clauses of the fourth Section, and the fifth and sixth Sections, of the seventh Article, delivered in the following Report:

“Strike out so much of the fourth Section as was referred to the Committee, and insert, ‘The migration or

importation of such persons as the several States, now existing, shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation, at a rate not exceeding the average of the duties laid on imports.'

"The fifth Section to remain as in the Report.

"The sixth Section to be stricken out."

Mr. BUTLER, according to notice, moved that the first clause of Article 7, Sect. 1, as to the discharge of debts, be re-considered to-morrow. He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders.

General PINCKNEY seconded him.

Mr. RANDOLPH wished for a re-consideration, in order to better the expression, and to provide for the case of the State debts as is done by Congress.

On the question for re-considering,—

Massachusetts, Connecticut, New Jersey, Delaware, Virginia, South Carolina, Georgia, aye—7; New Hampshire, Maryland, no—2; Pennsylvania, North Carolina, absent.

And to-morrow assigned for the re-consideration.

The second and third Sections of Article 9, being taken up,—

Mr. RUTLEDGE said, this provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established; and moved to strike it out.

Doctor JOHNSON seconded the motion.

Mr. SHERMAN concurred. So did Mr. DAYTON.

Mr. WILLIAMSON was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the Judiciary were interested, or too closely connected with the parties.

Mr. GORHAM had doubts as to striking out. The Judges might be connected with the States being parties. He was

inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the Judiciary.

On the question for postponing the second and third sections, it passed in the negative,—

New Hampshire, North Carolina, Georgia, aye — 3 ; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, no — 7 ; Pennsylvania, absent.

Mr. WILSON urged the striking out, the Judiciary being a better provision.

The question for striking out the second and third Sections of Article 9,—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, aye — 8 ; North Carolina, Georgia, no — 2 ; Pennsylvania, absent.

Article 10, Sect. 1. "The Executive power of the United States shall be vested in a single person. His style shall be "The President of the United States of America," and his title shall be "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years ; but shall not be elected a second time."

On the question for vesting the power in a *single person*,—it was agreed to, *nem. con.* So also on the *style and title*.

Mr. RUTLEDGE moved to insert, "joint," before the word "ballot," as the most convenient mode of electing.

Mr. SHERMAN objected to it, as depriving the *States*, represented in the *Senate*, of the negative intended them in that House.

Mr. GORHAM said it was wrong to be considering, at every turn, who the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue, if the two Houses should vote separately, each having a negative on the choice of the other.

Mr. DAYTON. It might be well for those not to con-

sider how the Senate was constituted, whose interest it was to keep it out of sight. If the amendment should be agreed to, a joint ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance and necessity of the case would ensure a concurrence.

Mr. CARROLL moved to strike out, "by the Legislature," and insert "by the people." Mr. WILSON seconded him; and on the question,—

Pennsylvania, Delaware, aye—2; New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—9.

Mr. BREARLY was opposed to inserting the word, "joint." The argument that the small States should not put their hands into the pockets of the large ones did not apply in this case.

Mr. WILSON urged the reasonableness of giving the larger States a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He remarked also, that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the Legislature.

Mr. LANGDON. This general officer ought to be elected by the joint and general voice. In New Hampshire the mode of separate votes by the two Houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting "joint," though unfavorable to New Hampshire as a small State.

Mr. WILSON remarked, that as the President of the Senate was to be the President of the United States, that body, in cases of vacancy, might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Mr. MADISON. If the amendment be agreed to, the rule

of voting will give to the largest State, compared with the smallest, an influence as four to one only, although the population is as ten to one. This surely cannot be unreasonable, as the President is to act for the *people*, not for the *States*. The President of the *Senate* also is to be occasionally President of the United States, and by his negative alone can make three-fourths of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting "joint," it passed in the affirmative,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye—7; Connecticut, New Jersey, Maryland, Georgia, no—4.

Mr. DAYTON then moved to insert, after the word "Legislature," the words, "each State having one vote."

Mr. BREARLY seconded him; and on the question, it passed in the negative,—Connecticut, New Jersey, Delaware, Maryland, Georgia, aye—5; New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no—6.

Mr. PINCKNEY moved to insert, after the word "Legislature," the words, "to which election a majority of the votes of the members present shall be required."

And on this question, it passed in the affirmative,—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10; New Jersey, no—1.

Mr. READ moved, that, "in case the number for the two highest in votes should be equal, then the President of the Senate shall have an additional casting vote," which was disagreed to by a general negative.

Mr. GOUVERNEUR MORRIS opposed the election of the President by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his station, as leading to legislative tyranny. If the Legislature have the Executive dependent on them,

they can perpetuate and support their usurpations by the influence of the tax-gatherers and other officers, by fleets, armies, &c. Cabal and corruption are attached to that mode of election. So is ineligibility a second time. Hence the Executive is interested in courting popularity in the Legislature, by sacrificing his Executive rights; and then he can go into that body after the expiration of his Executive office, and enjoy there the fruits of his policy. To these considerations he added, that rivals would be continually intriguing to oust the President from his place. To guard against all these evils, he moved that the President "shall be chosen by Electors to be chosen by the people of the several States."

Mr. CARROLL seconded him; and on the question, it passed in the negative, — Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, aye — 5; New Hampshire, Massachusetts, Maryland, North Carolina, South Carolina, Georgia, no — 6.

Mr. DAYTON moved to postpone the consideration of the two last clauses of Article 10, Sect. 1, which was disagreed to without a count of the States.

Mr. BROOM moved to refer the two clauses to a committee, of a member from each State; and on the question, it failed, the States being equally divided, —

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, aye — 5; New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, no — 5; Connecticut, divided.

On the question taken on the first part of Mr. GOUVERNEUR MORRIS' motion, to wit: "shall be chosen by electors," as an abstract question, it failed, the States being equally divided, —

New Jersey, Pennsylvania, Delaware, Virginia, aye — 4; New Hampshire, North Carolina, South Carolina, Georgia, no — 4; Connecticut, Maryland, divided; Massachusetts, absent.

The consideration of the remaining clauses of Article 10, Sect. 1, was then postponed till to-morrow, at the instance of the Deputies of New Jersey.

Article 10, Sect. 2, being taken up, the word "information" was transferred, and inserted after "Legislature."

On motion of Mr. GOUVERNEUR MORRIS, "he may," was struck out and "and" inserted before "recommend," in the second clause of Article 10, Sect. 2, in order to make it the *duty* of the President to recommend, and thence prevent umbrage or cavil at his doing it.

Mr. SHERMAN objected to the sentence, "and shall appoint officers in all cases not otherwise provided for in this Constitution." He admitted it to be proper that many officers in the Executive department should be so appointed; but contended that many ought not,— as general officers in the army, in time of peace, &c. Herein lay the corruption in Great Britain. If the Executive can model the army, he may set up an absolute government; taking advantage of the close of a war, and an army commanded by his creatures. James II. was not obeyed by his officers, because they had been appointed by his predecessors, not by himself. He moved to insert, "or by law," after the word "constitution."

On motion of Mr. MADISON, "officers" was struck out, and "to offices" inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the Legislature.

On the question for inserting, "or by law," as moved by Mr. SHERMAN,— Connecticut, aye — 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, no — 9; North Carolina, absent.

Mr. DICKINSON moved to strike out the words, "and shall appoint to offices in all cases not otherwise provided for by this Constitution;" and insert, "and shall appoint to all offices established by this Constitution, except in cases

herein otherwise provided for; and to all offices which may hereafter be created by law."

Mr. RANDOLPH observed, that the power of appointments was a formidable one both in the Executive and Legislative hands; and suggested whether the Legislature should not be left at liberty to refer appointments, in some cases, to some State authority.

Mr. DICKINSON's motion passed in the affirmative,—

Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Georgia, aye — 6; New Hampshire, Massachusetts, Delaware, South Carolina, no — 4; North Carolina, absent.

Mr. DICKINSON then moved to annex to his last amendment, "except where by law the appointment shall be vested in the Legislatures or Executives of the several States."

Mr. RANDOLPH seconded the motion.

Mr. WILSON. If this be agreed to, it will soon be a standing instruction to the State Legislatures to pass no law creating offices, unless the appointment be referred to them.

Mr. SHERMAN objected to "Legislatures," in the motion, which was struck out by consent of the movers.

Mr. GOUVERNEUR MORRIS. This would be putting it in the power of the States to say; "you shall be viceroys, but we will be viceroys over you."

The motion was negatived without a count of the States.

Ordered unanimously, that the order respecting the adjournment at four o'clock be repealed, and that in future the House assemble at ten o'clock, and adjourn at three.

Adjourned.

SATURDAY, AUGUST 25TH.

In Convention,—The first clause of Article 7, Sect. 1, being reconsidered,—

Colonel MASON objected to the term "*shall*" fulfil the engagements and discharge the debts, &c., as too strong. It may be impossible to comply with it. The creditors

should be kept in the same plight. They will in one respect be necessarily and properly in a better. The Government will be more able to pay them. The use of the term *shall* will beget speculations, and increase the pestilential practice of stock-jobbing. There was a great distinction between original creditors and those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought stock in the open market. He was sensible of the difficulty of drawing the line in this case, but he did not wish to preclude the attempt. Even fair purchasers, at four, five, six, eight for one, did not stand on the same footing with the first holders, supposing them not to be blamable. The interest they received, even in paper, is equal to their purchase money. What he particularly wished was, to leave the door open for buying up the securities, which he thought would be precluded by the term "shall," as requiring *nominal payment*, and which was not inconsistent with his ideas of public faith. He was afraid, also, the word "*shall*" might extend to all the old continental paper.

Mr. LANGDON wished to do no more, than leave the creditors *in statu quo*.

Mr. GERRY said, that, for himself, he had no interest in the question, being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe, however, that as the public had received the value of the literal amount, they ought to pay that value to somebody. The frauds on *the soldiers* ought to have been foreseen. These poor and ignorant people, could not but part with their securities. There are other creditors, who will part with any thing, rather than be cheated of the capital of their advances. The interest of the States, he observed, was different on this point; some having more, others less, than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit, of which he was not clear, he would not object to a revision of the debt, so far as to compel restitu-

tion to the ignorant and distressed, who have been defrauded. As to stock-jobbers, he saw no reason for the censures thrown on them. They keep up the value of the paper. Without them there would be no market.

Mr. BUTLER said he meant neither to increase nor diminish the security of the creditors.

Mr. RANDOLPH moved to postpone the clause, in favor of the following: "All debts contracted, and engagements entered into, by or under the authority of Congress, shall be as valid against the United States under this Constitution, as under the Confederation."

Doctor JOHNSON. The debts are debts of the United States, of the great body of America. Changing the Government cannot change the obligation of the United States, which devolves of course on the new Government. Nothing was, in his opinion, necessary to be said. If any thing, it should be a mere declaration, as moved by Mr. RANDOLPH.

Mr. GOUVERNEUR MORRIS said, he never had become a public creditor, that he might urge with more propriety the compliance with public faith. He had always done so, and always would, and preferred the term "*shall*," as the most explicit. As to *buying up* the debt, the term "*shall*" was not inconsistent with it, if provision be first made for paying the interest; if not, such an expedient was a mere evasion. He was content to say nothing, as the new Government would be bound of course; but would prefer the clause with the term "*shall*," because it would create many friends to the plan.

On Mr. RANDOLPH's motion,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 10; Pennsylvania, no — 1.

Mr. SHERMAN thought it necessary to connect with the clause for laying taxes, duties, &c., an express provision for the object of the old debts, &c.; and moved to add to the first clause of Article 7, Sect. 1: "for the payment of said

debts, and for the defraying the expenses that shall be incurred for the common defence and general welfare."

The proposition, as being unnecessary, was disagreed to, — Connecticut alone being in the affirmative.

The Report of the Committee of eleven (see Friday, the twenty-fourth), being taken up,—

General PINCKNEY moved to strike out the words, "the year eighteen hundred," as the year limiting the importation of slaves ; and to insert the words, "the year eighteen hundred and eight."

Mr GORHAM seconded the motion.

Mr. MADISON. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonourable to the American character, than to say nothing about it in the Constitution.

On the motion, which passed in the affirmative,—New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, aye — 7 ; New Jersey, Pennsylvania, Delaware, Virginia, no — 4.

Mr. GOUVERNEUR MORRIS was for making the clause read at once, "the importation of slaves into North Carolina, South Carolina, and Georgia, shall not be prohibited, &c." This he said, would be most fair, and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known, also, that this part of the Constitution was a compliance with those States. If the change of language, however, should be objected to, by the members from those States, he should not urge it.

Colonel MASON was not against using the term "slaves," but against naming North Carolina, South Carolina, and Georgia, lest it should give offence to the people of those States.

Mr. SHEPHERD liked a description better than the terms proposed, which had been declined by the old Congress, and were not pleasing to some people.

Mr. CLYMER concurred with Mr. SHEEMAN.

Mr. WILLIAMSON said, that both in opinion and practice he was against slavery ; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina, and Georgia on those terms, than to exclude them from the Union.

Mr. GOUVERNEUR MORRIS withdrew his motion.

Mr. DICKINSON wished the clause to be confined to the States which had not themselves prohibited the importation of slaves ; and for that purpose moved to amend the clause, so as to read : "The importation of slaves into such of the States as shall permit the same, shall not be prohibited by the Legislature of the United States, until the year 1808 ;" which was disagreed to, *nem. con.**

The first part of the Report was then agreed to, amended as follows : "The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808,"—

New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, aye — 7; New Jersey, Pennsylvania, Delaware, Virginia, no — 4.

Mr. BALDWIN, in order to restrain and more explicitly define, "the average duty," moved to strike out of the second part the words, "average of the duties laid on imports," and insert "common impost on articles not enumerated;" which was agreed to, *nem. con.*

Mr. SHERMAN was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves.

Mr. KING and Mr. LANGDON considered this as the price of the first part.

General PINCKNEY admitted that it was so.

Colonel MASON. Not to tax, will be equivalent to a bounty on, the importation of slaves.

* In the printed Journals, Connecticut, Virginia, and Georgia, voted in the affirmative.

Mr. GOBHAM thought that Mr. SHEERMAN should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mr. GOUVERNEUR MORRIS remarked, that, as the clause now stands, it implies that the Legislature may tax freemen imported.

Mr. SHEERMAN, in answer to Mr. GOBHAM, observed, that the smallness of the duty showed revenue to be the object, not the discouragement of the importation.

Mr. MADISON thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not, like merchandise consumed, &c.

Colonel MASON, in answer to Mr. GOUVERNEUR MORRIS. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them.

It was finally agreed, *nem. con.*, to make the clause read: "but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person;" and then the second part, as amended, was agreed to.

Article 7, Sect. 5, was agreed to, *nem. con.*, as reported.

Article 7, Sect. 6, in the Report was postponed.

On motion of Mr. MADISON, seconded by Mr. GOUVERNEUR MORRIS, Article 8 was reconsidered; and after the words, "all treaties made," were inserted, *nem. con.*, the words, "or which shall be made." This insertion was meant to obviate all doubt concerning the force of treaties pre-existing, by making the words, "all treaties made," to refer to them, as the words inserted would refer to future treaties.

Mr. CARROLL and Mr. L. MARTIN expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the General Legislature might favor the ports of particular States, by requiring vessels destined to or from other States to enter and clear thereat; as vessels belonging or bound to Balti-

more, to enter and clear at Norfolk, &c. They moved the following proposition:

“The Legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one State in preference to another.”

Mr. GORHAM thought such a precaution unnecessary; and that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different States, without being required to enter, with the opportunity of landing and selling their cargoes by the way.

Mr. McHENRY and Gen. PINCKNEY made the following propositions:

“Should it be judged expedient by the Legislature of the United States, that one or more ports for collecting duties or imposts, other than those ports of entrance and clearance already established by the respective States, should be established, the Legislature of the United States shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary, to be laid by the said Executives before the Legislatures of the States at their next session; and the Legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the United States to the Executive of such State.

“All duties, imposts and excise, prohibitions or restraints, laid or made by the Legislature of the United States, shall be uniform and equal throughout the United States.”

These several propositions were referred, *nem. con.*, to a

committee composed of a member from each State. The Committee appointed by ballot, were, Mr. LANGDON, Mr. GORHAM, Mr. SHERMAN, Mr. DAYTON, Mr. FITZSIMONS, Mr. READ, Mr. CARROLL, Mr. MASON, Mr. WILLIAMSON, Mr. BUTLER, Mr. FEW.

On the question now taken on Mr. DICKINSON'S motion of yesterday, allowing appointments to offices to be referred by the General Legislature to "the Executives of the several States," as a further amendment to Article 10, Sect. 2, the votes were,— Connecticut, Virginia, Georgia, aye — 3; New Hampshire, Massachusetts, Pennsylvania, Delaware, North Carolina, South Carolina, no — 6; Maryland, divided.

In amendment of the same section, the words, "other public Ministers," were inserted after "ambassadors."

Mr. GOUVERNEUR MORRIS moved to strike out of the section, "and may correspond with the supreme Executives of the several States," as unnecessary, and implying that he could not correspond with others.

Mr. BROOM seconded him.

On the question,— New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Maryland, no — 1.

The clause, "Shall receive ambassadors and other public Ministers," was agreed to, *nem. con.*

Mr. SHERMAN moved to amend the "power to grant reprieves and pardons," so as to read, "to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate."

On the question,— Connecticut, aye,— 1; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 8.

The words, "except in cases of impeachment," were inserted, *nem. con.*, after "pardons."

On the question to agree to, "but his pardon shall not be pleadable in bar," it passed in the negative,—New

Hampshire, Maryland, North Carolina, South Carolina, aye,—4; Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, Georgia, no—6.

Adjourned.

MONDAY, AUGUST 27TH.

In Convention,— Article 10, Section 2, being resumed,—

Mr. L. MARTIN moved to insert the words, “after conviction,” after the words, “reprieves and pardons.”

Mr. WILSON objected, that pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen.

Mr. L. MARTIN withdrew his motion.

Mr. SHERMAN moved to amend the clause giving the Executive the command of the militia, so as to read: “and of the militia of the several States, *when called into the actual service of the United States*;” and on the question,—

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, Georgia, aye—6; Delaware, South Carolina, no—2; Massachusetts, New Jersey, North Carolina, absent.

The clause for removing the President, on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption, was postponed, *nem. con.*, at the instance of Mr. GOUVERNEUR MORRIS; who thought the tribunal an improper one, particularly, if the first Judge was to be of the Privy Council.

Mr. GOUVERNEUR MORRIS objected also to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

Mr. MADISON adds, as a ground of objection, that the Senate might retard the appointment of a President, in order to carry points whilst the revisionary power was in the President of their own body; but suggested that the executive powers during a vacancy be administered by the persons composing the Council to the President.

Mr. WILLIAMSON suggested that the Legislature ought to have power to provide for occasional successors; and moved that the last clause of Article 10, Sect. 2, relating to a provisional successor to the President, be postponed.

Mr. DICKINSON seconded the postponement, remarking that it was too vague. What is the extent of the term "disability," and who is to be the judge of it.

The postponement was agreed to, *nem. con.*

Col. MASON and Mr. MADISON moved to add to the oath to be taken by the Supreme Executive, "and will, to the best of my judgment and power, preserve, protect, and defend, the Constitution of the United States."

Mr. WILSON thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.

On the question,—

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, aye—7; Delaware, no—1; Massachusetts, New Jersey, North Carolina, absent.

Article 11, being next taken up,—

Doctor JOHNSON suggested that the judicial power ought to extend to equity as well as law; and moved to insert the words, "both in law and equity," after the words, "United States," in the first line of the first section.

Mr. READ objected to vesting these powers in the same court.

On the question,—

New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia, aye—6; Delaware, Maryland, no—2; Massachusetts, New Jersey, North Carolina, absent.

On the question to agree to Article 11, Sect. 1, as amended, the States were the same as on the preceding question.

Mr. DICKINSON moved an amendment to Article 11, Sect. 2, after the words, "good behaviour," the words "provided that they may be removed by the Executive on

the application by the Senate and House of Representatives."

Mr. GEBBY seconded the motion.

Mr. GOUVERNEUR MORRIS thought it a contradiction in terms, during good behaviour, and yet be removeable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. SHERMAN saw no contradiction or impropriety, if this were made a part of the constitutional regulation of the Judiciary establishment. He observed that a like provision was contained in the British statutes.

Mr. RUTLEDGE. If the Supreme Court is to judge between the United States and particular States, this alone is an insuperable objection to the motion.

Mr. WILSON considered such a provision in the British Government as less dangerous than here; the House of Lords and House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended, by his independent conduct, both Houses of Parliament. Had this happened at the same time, he would have been ousted. The Judges would be in a bad situation, if made to depend on any gust of faction which might prevail in the two branches of our Government.

Mr. RANDOLPH opposed the motion, as weakening too much the independence of the Judges.

Mr. DICKINSON was not apprehensive that the Legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a Judge.

On the question for agreeing to Mr. DICKINSON's motion, it was negatived,—Connecticut, aye; all the other States present, no.

On the question on Article 11, Section 2, as reported, Delaware and Maryland only, no.

Mr. MADISON and Mr. MCHENRY moved to re-instate the words, "increased or," before the word "diminished," in Article 11, Section 2.

Mr. GOUVERNEUR MORRIS opposed it, for reasons urged by him on a former occasion.

Colonel MASON contended strenuously for the motion. There was no weight, he said, in the argument drawn from changes in the value of the metals, because this might be provided for by an increase of salaries, so made as not to affect persons in office;—and this was the only argument on which much stress seemed to have been laid.

General PINCKNEY. The importance of the Judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the United States can afford in the first instance. He was not satisfied with the expedient mentioned by Col. MASON. He did not think it would have a good effect, or a good appearance, for new Judges to come in with higher salaries than the old ones.

Mr. GOUVERNEUR MORRIS said the expedient might be evaded, and therefore amounted to nothing. Judges might resign, and then be re-appointed to increased salaries.—

On the question,—

Virginia, aye — 1; New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, no — 5; Maryland, divided; Massachusetts, New Jersey, North Carolina, Georgia, absent.

Mr. RANDOLPH and Mr. MADISON then moved to add the following words to Article 11, Section 2: “nor increased by any act of the Legislature which shall operate before the expiration of three years after the passing thereof.”

On the question,—Maryland, Virginia, aye — 2; New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, no — 5; Massachusetts, New Jersey, North Carolina, Georgia, absent.

Article 11, Section 3, being taken up, the following clause was postponed, viz: “to the trial of impeachments of officers of the United States;” by which the jurisdiction of the Supreme Court was extended to such cases.

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to insert, after the word “controversies,” the words, “to which

the United States shall be a party;" which was agreed to, *nem. con.*

Doctor JOHNSON moved to insert the words, "this Constitution and the," before the word "laws."

Mr. MADISON doubted whether it was not going too far, to extend the jurisdiction of the Court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.

The motion of Doctor JOHNSON was agreed to, *nem. con.*, it being generally supposed, that the jurisdiction given was constructively limited to cases of a judiciary nature.

On motion of Mr. RUTLEDGE, the words "passed by the Legislature," were struck out; and after the words, "United States," were inserted, *nem. con.*, the words "and treaties made or which shall be made under their authority," conformably to a preceding amendment in another place.

The clause, "in cases of impeachment," was postponed.

Mr. GOUVERNEUR MORRIS wished to know what was meant by the words: "In all the cases before mentioned it [jurisdiction] shall be appellate, with such exceptions, &c."—whether it extended to matters of fact as well as law—and to cases of common law, as well as civil law.

Mr. WILSON. The Committee, he believed, meant facts as well as law, and common as well as civil law. The jurisdiction of the Federal court of appeals had, he said, been so construed.

Mr. DICKINSON moved to add, after the word "appellate," the words, "both as to law and fact;" which was agreed to, *nem. con.*

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to strike out the beginning of the third section, "The jurisdiction of the Supreme Court," and to insert the words, "the Judicial power," which was agreed to, *nem. con.*

The following motion was disagreed to, to wit, to insert,

“In all the other cases before mentioned, the judicial power shall be exercised in such manner as the Legislature shall direct.”

Delaware, Virginia, aye—2; New Hampshire, Connecticut, Pennsylvania, Maryland, South Carolina, Georgia, no—6.

On the question for striking out the last sentence of the third Section, “The Legislature may assign, &c.” it passed, *nem. con.*

Mr. SHERMAN moved to insert, after the words, “between citizens of different States,” the words, “between citizens of the same State claiming lands under grants of different States,”—according to the provision in the 9th Article of the Confederation; which was agreed to, *nem. con.*

Adjourned.

TUESDAY, AUGUST 28TH.

In Convention,—Mr. SHERMAN, from the Committee to whom were referred several propositions on the twenty-fifth instant, made the following report; which was ordered to lie on the table:

“That there be inserted, after the fourth clause of the 7th Section: ‘Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter, clear or pay duties in another; and all tonnage, duties, imposts, and excises laid by the Legislature, shall be uniform throughout the United States.’”

Article 11, Section 3, being considered,—it was moved to strike out the words, “it shall be appellate,” and to insert the words, “the Supreme Court shall have appellate jurisdiction,”—in order to prevent uncertainty whether “it” referred to the *Supreme Court*, or to the *Judicial power*.

On the question,—New Hampshire, Massachusetts,

Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—9; Maryland, no—1; New Jersey, absent.

Section 4 was so amended, *nem. con.*, as to read: "The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct." The object of this amendment was, to provide for trial by jury of offences committed out of any State.

Mr. PINCKNEY, urging the propriety of securing the benefit of the Habeas Corpus in the most ample manner, moved, that it should not be suspended but on the most urgent occasions, and then only for a limited time not exceeding twelve months.

Mr. RUTLEDGE was for declaring the Habeas Corpus inviolate. He did not conceive that a suspension could ever be necessary, at the same time, through all the States.

Mr. GOUVERNEUR MORRIS moved, that, "The privilege of the writ of Habeas Corpus shall not be suspended, unless where, in cases of rebellion or invasion, the public safety may require it."

Mr. WILSON doubted whether in any case a suspension could be necessary, as the discretion now exists with Judges, in most important cases, to keep in gaol or admit to bail.

The first part of Mr. GOUVERNEUR MORRIS's motion, to the word "unless," was agreed to, *nem. con.* On the remaining part,—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, aye—7; North Carolina, South Carolina, Georgia, no—3.

The fifth Section of Article 11, was agreed to, *nem. con.**

Article 12 being then taken up,—

Mr. WILSON and Mr. SHERMAN moved to insert, after the words, "coin money," the words, "nor emit bills of

* The vote on this section, as stated in the printed Journal, is not unanimous: the statement here is probably the right one.

credit, nor make any thing but gold and silver coin a tender in payment of debts;" making these prohibitions absolute, instead of making the measures allowable, as in the thirteenth Article, *with the consent of the Legislature of the United States.*

Mr. GORHAM thought the purpose would be as well secured by the provision of Article 13, which makes the consent of the General Legislature necessary; and that in that mode no opposition would be excited; whereas an absolute prohibition of paper-money would rouse the most desperate opposition from its partisans.

Mr. SHERMAN thought this a favourable crisis for crushing paper-money. If the consent of the Legislature could authorize emissions of it, the friends of paper-money would make every exertion to get into the Legislature in order to license it.

The question being divided,—on the first part: "nor emit bills of credit,"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, aye—8; Virginia, no—1; Maryland, divided.

The remaining part of Mr. WILSON's and SHERMAN's motion was agreed to, *nem. con.*

Mr. KING moved to add, in the words used in the ordinance of Congress establishing new States, a prohibition on the States to interfere in private contracts.

Mr. GOUVERNEUR MORRIS. This would be going too far. There are a thousand laws relating to bringing actions, limitations of actions, &c., which affect contracts. The judicial power of the United States will be a protection in cases within their jurisdiction; and within the State itself a majority must rule, whatever may be the mischief done among themselves.

Mr. SHERMAN. Why then prohibit bills of credit?

Mr. WILSON was in favor of Mr. KING's motion.

Mr. MADISON admitted that inconveniences might arise from such a prohibition; but thought on the whole it would

be overbalanced by the utility of it. He conceived, however, that a negative on the State laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the Legislatures.

Col. MASON. This is carrying the restraint too far. Cases will happen that cannot be foreseen, where some kind of interference will be proper and essential. He mentioned the case of limiting the period for bringing actions on open account — that of bonds after a certain lapse of time — asking, whether it was proper to tie the hands of the States from making provision in such cases.

Mr. WILSON. The answer to these objections is, that retrospective *interferences* only are to be prohibited.

Mr. MADISON. Is not that already done by the prohibition of *ex post facto* laws, which will oblige the Judges to declare interferences null and void.

Mr. RUTLEDGE moved, instead of Mr. KING's motion, to insert, "nor pass bills of attainder, nor retrospective* laws."

On which motion,—New Hampshire, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, aye — 7; Connecticut, Maryland, Virginia, no — 3.

Mr. MADISON moved to insert, after the word "reprisal," (Article 12,) the words, "nor lay embargoes." He urged that such acts by the States would be unnecessary, impolitic, and unjust.

Mr. SHERMAN thought the States ought to retain this power, in order to prevent suffering and injury to their poor.

Col. MASON thought the amendment would be not only improper but dangerous, as the General Legislature would not sit constantly, and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes, during the war, to prevent exports, particularly in the case of a blockade.

Mr. GOUVERNEUR MORRIS considered the provision as

* In the printed Journal, "*ex post facto*."

unnecessary; the power of regulating trade between State and State, already vested in the General Legislature, being sufficient.

On the question, —

Massachusetts, Delaware, South Carolina, aye — 3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, no — 8.

Mr. MADISON moved, that the words, “nor lay imposts or duties on imports,” be transferred from Article 13, where the consent of the General Legislature may license the act, into Article 12, which will make the prohibition on the States absolute. He observed, that as the States interested in this power, by which they could tax the imports of their neighbours passing through their markets, were a majority, they could give the consent of the Legislature to the injury of New Jersey, North Carolina, &c.

Mr. WILLIAMSON seconded the motion.

Mr. SHERMAN thought the power might safely be left to the Legislature of the United States.

Col. MASON observed, that particular States might wish to encourage, by impost duties, certain manufactures, for which they enjoyed natural advantages, as Virginia, the manufacture of hemp, &c.

Mr. MADISON. The encouragement of manufactures in that mode requires duties, not only on imports directly from foreign countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a general Government over commerce.

On the question, —

New Hampshire, New Jersey, Delaware, North Carolina, aye — 4; Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no — 7.

Article 12, as amended, was then agreed to, *nem. con.*

Article 13, was then taken up.

Mr. KING moved to insert, after the word “imports,” the words, “or exports,” so as to prohibit the States from

taxing either; and on this question, it passed in the affirmative, —

New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, aye — 6; Connecticut, Maryland, Virginia, South Carolina, Georgia, no — 5.

Mr. SHERMAN moved to add, after the word "exports," the words, "nor with such consent, but for the use of the United States;" so as to carry the proceeds of all State duties on imports or exports, into the common treasury.

Mr. MADISON liked the motion, as preventing all State imposts; but lamented the complexity we were giving to the commercial system.

Mr. GOUVERNEUR MORRIS thought the regulation necessary, to prevent the Atlantic States from endeavouring to tax the Western States, and promote their interest by opposing the navigation of the Mississippi, which would drive the Western people into the arms of Great Britain.

Mr. CLYMER thought the encouragement of the Western country was suicide on the part of the old States. If the States have such different interests that they cannot be left to regulate their own manufactures, without encountering the interests of other States, it is a proof that they are not fit to compose one nation.

Mr. KING was afraid that the regulation moved by Mr. SHERMAN would too much interfere with the policy of States respecting their manufactures, which may be necessary. Revenue, he reminded the House, was the object of the General Legislature.

On Mr. SHERMAN's motion, —

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Massachusetts, Maryland, no — 2.

Article 13, was then agreed to, as amended.

Article 14, was then taken up.

General PINCKNEY was not satisfied with it. He seemed to wish some provision should be included in favour of property in slaves.

On the question on Article 14, —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye — 9; South Carolina, no — 1; Georgia, divided.

Article 15, being then taken up, the words, "high misdemeanour," were struck out, and the words, "other crime," inserted, in order to comprehend all proper cases; it being doubtful whether "high misdemeanour" had not a technical meaning too limited.

Mr. BUTLER and Mr. PINCKNEY moved to require "fugitive slaves and servants to be delivered up like criminals."

Mr. WILSON. This would oblige the Executive of the State to do it, at the public expense.

Mr. SHERMAN saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.

Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article.

Article 15, as amended, was then agreed to, *nem con.*

Adjourned.

WEDNESDAY, AUGUST 29TH.

In Convention,— Article 16, being taken up, —

Mr. WILLIAMSON moved to substitute, in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article.

Mr. WILSON and Doctor JOHNSON supposed the meaning to be, that judgments in one State should be the ground of actions in other States; and that acts of the Legislatures should be included, for the sake of acts of insolvency, &c.

Mr. PINCKNEY moved to commit Article 16, with the following proposition: "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange."

Mr. GORHAM was for agreeing to the article, and committing the proposition.

Mr. MADISON was for committing both. He wished the Legislature might be authorized to provide for the *execution* of judgments in other States, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Mr. RANDOLPH said there was no instance of one nation executing judgments of the courts of another nation. He moved the following proposition:

“Whenever the act of any State, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other States as full proof of the existence of that act; and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State wherein the said act was done.”

On the question for committing Article 16, with Mr. PINCKNEY’S motion,—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 9; New Hampshire, Massachusetts, no — 2.

The motion of Mr. RANDOLPH was also committed, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to commit also the following proposition on the same subject:

“Full faith ought to be given in each State to the public acts, records, and judicial proceedings, of every other State; and the Legislature shall, by general laws, determine the proof and effect of such acts, records, and proceedings;” and it was committed, *nem. con.*

The Committee appointed for these references were, Mr. RUTLEDGE, Mr. RANDOLPH, Mr. GORHAM, Mr. WILSON, and Mr. JOHNSON.

Mr. DICKINSON mentioned to the House, that on examining Blackstone’s Commentaries, he found that the term “*ex*”

post facto " related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases; and that some further provision for this purpose would be requisite.

Article 7, Section 6, by the Committee of eleven reported to be struck out (see the twenty-fourth inst.) being now taken up,—

Mr. PINCKNEY moved to postpone the Report, in favor of the following proposition: " That no act of the Legislature for the purpose of regulating the commerce of the United States with foreign powers, among the several States shall be passed without the assent of two-thirds of the members of each House." He remarked that there were five distinct commercial interests. 1. The fisheries and West India trade, which belonged to the New England States. 2. The interest of New York lay in a free trade. 3. Wheat and flour the staples of the two Middle States (New Jersey and Pennsylvania). 4. Tobacco, the staple of Maryland and Virginia, and partly of North Carolina. 5. Rice and indigo, the staples of South Carolina and Georgia. These different interests would be a source of oppressive regulations, if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the Southern States. They did not need the protection of the Northern States at present.

Mr. MARTIN seconded the motion.

General PINCKNEY said it was the true interest of the Southern States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the Revolution, their liberal conduct towards the views* of South Carolina, and the interest the weak Southern States had in being united with the strong

* He meant the permission to import slaves. An understanding on the two subjects of navigation and slavery, had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of General Pinckney and others.

Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had, himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Mr. CLYMER. The diversity of commercial interests, of necessity, creates difficulties which ought not to be increased by unnecessary restrictions. The Northern and Middle States will be ruined, if not enabled to defend themselves against foreign regulations.

Mr. SHERMAN, alluding to Mr. PINCKNEY's enumeration of particular interests, as requiring a security against abuse of the power, observed, that the diversity was of itself a security; adding, that to require more than a majority to decide a question was always embarrassing, as had been experienced in cases requiring the votes of nine States in Congress.

Mr. PINCKNEY replied, that his enumeration meant the five minute interests. It still left the two great divisions, of Northern and Southern interests.

Mr. GOUVERNEUR MORRIS opposed the object of the motion, as highly injurious. Preferences to American ships will multiply them, till they can carry the Southern produce cheaper than it is now carried. A navy was essential to security, particularly of the Southern States; and can only be had by a navigation act encouraging American bottoms and seamen. In those points of view, then, alone, it is the interest of the Southern States that navigation acts should be facilitated. Shipping, he said, was the worst and most precarious kind of property, and stood in need of public patronage,

Mr. WILLIAMSON was in favor of making two-thirds, instead of a majority, requisite, as more satisfactory to the Southern people. No useful measure, he believed, had been lost in Congress for want of nine votes. As to the weak-

ness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring two-thirds necessary in itself; because if a majority of the Northern States should push their regulations too far, the Southern States would build ships for themselves; but he knew the Southern people were apprehensive on this subject, and would be pleased with the precaution.

Mr. SPAIGHT was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

Mr. BUTLER differed from those who considered the rejection of the motion as no concession on the part of the Southern States. He considered the interest of these and of the Eastern States to be as different as the interests of Russia and Turkey. Being, notwithstanding, desirous of conciliating the affections of the Eastern States, he should vote against requiring two-thirds instead of a majority.

Col. MASON. If the Government is to be lasting it must be founded in the confidence and affections of the people; and must be so constructed as to obtain these. The *majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves bound, hand and foot, to the Eastern States, and enable them to exclaim, in the words of Cromwell, on a certain occasion — “the Lord hath delivered them into our hands?”

Mr. WILSON took notice of the several objections, and remarked, that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority, he said, would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot, than the former. Great inconveniences had, he contended, been experienced in Congress from the Article of Confederation requiring nine votes in certain cases.

Mr. MADISON went into a pretty full view of the subject.

He observed that the disadvantage to the Southern States from a navigation act lay chiefly in a temporary rise of freight, attended, however, with an increase of Southern as well as Northern shipping — with the emigration of Northern seamen and merchants to the Southern States — and with a removal of the existing and injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliating measures on them, by a corrupt influence, would also be less, if a majority should be made competent, than if two-thirds of each House should be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of two branches — by the independence of the Senate — by the negative of the Executive — by the interest of Connecticut and New Jersey, which were agricultural, not commercial States — by the interior interest, which was also agricultural in the most commercial States — and by the accession of Western States, which would be altogether agricultural. He added, that the Southern States would derive an essential advantage, in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the Southern States, by increasing the consumption of their produce. If the wealth of the Eastern should in a still greater proportion be augmented, that wealth would contribute the more to the public wants, and be otherwise a national benefit.

Mr. RUTLEDGE was against the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused. At the worst, a navigation act could bear hard a little while only on the Southern States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject, and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this

country. That was the great object, and a navigation act was necessary for obtaining it.

Mr. RANDOLPH said that there were features so odious in the Constitution, as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would complete the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures, if two-thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority and two-thirds, did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President, who could require three-fourths by his negative. He did not mean, however, to enter into the merits. What he had in view was merely to pave the way for a declaration, which he might be hereafter obliged to make; if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

Mr. GORHAM. If the Government is to be so fettered as to be unable to relieve the Eastern States, what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves? The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion; but if it should take place, it was the Southern part of the Continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern and Middle States being a security against it. It was, moreover, certain, that foreign ships would never be altogether excluded, especially those of nations in treaty with us.

On the question to postpone, in order to take up Mr. PINCKNEY'S motion,—

Maryland, Virginia, North Carolina, Georgia, aye — 4;

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no — 7.

The Report of the Committee for striking out Section 6, requiring two-thirds of each House to pass a navigation act, was then agreed to, *nem. con.*

Mr. BUTLER moved to insert after Article 15, "If any person bound to service or labor in any of the United States, shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor,"— which was agreed to, *nem. con.*

Article 17, being then taken up,—

Mr. GOUVERNEUR MORRIS moved to strike out the two last sentences, to wit: "If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting." He did not wish to bind down the Legislature to admit Western States on the terms here stated.

Mr. MADISON opposed the motion; insisting that the Western States neither would, nor ought to submit to a union which degraded them from an equal rank with the other States.

Col. MASON. If it were possible by just means to prevent emigrations to the Western country, it might be good policy. But go the people will, as they find it for their interest; and the best policy is to treat them with that equality which will make them friends not enemies.

Mr. GOUVERNEUR MORRIS did not mean to discourage the growth of the Western country. He knew that to be impossible. He did not wish, however, to throw the power into their hands.

Mr. SHERMAN was against the motion, and for fixing an equality of privileges by the Constitution.

Mr. LANGDON was in favor of the motion. He did not know but circumstances might arise, which would render it inconvenient to admit new States on terms of equality.

Mr. WILLIAMSON was for leaving the Legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On Mr. GOUVERNEUR MORRIS'S motion, for striking out,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, aye — 9; Maryland, Virginia, no — 2.

Mr. L. MARTIN and Mr. GOUVERNEUR MORRIS moved to strike out of Article 17, “but to such admission the consent of two-thirds of the members present shall be necessary.” Before any question was taken on this motion,—

Mr. GOUVERNEUR MORRIS moved the following proposition, as a substitute for the seventeenth Article:

“New States may be admitted by the Legislature into the Union; but no new States shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the General Legislature.”

The first part, to “Union,” inclusive, was agreed to, *nem. con.*

Mr. L. MARTIN opposed the latter part. Nothing, he said, would so alarm the limited States, as to make the consent of the large States, claiming the Western lands, necessary to the establishment of new States within their limits. It is proposed to guarantee the States. Shall Vermont be reduced by force, in favor of the States claiming it? Frankland and the Western county of Virginia were in a like situation.

On Mr. GOUVERNEUR MORRIS'S motion, to substitute, &c., it was agreed to,—

Massachusetts, Pennsylvania, Virginia, North Carolina,

South Carolina, Georgia, aye—6; New Hampshire, Connecticut, New Jersey, Delaware, Maryland, no—5.

Article 17, being before the House, as amended,—

Mr. SHERMAN was against it. He thought it unnecessary. The Union cannot dismember a State without its consent.

Mr. LANGDON thought there was great weight in the argument of Mr. LUTHER MARTIN; and that the proposition substituted by Mr. GOUVERNEUR MORRIS would excite a dangerous opposition to the plan.

Mr. GOUVERNEUR MORRIS thought, on the contrary, that the small States would be pleased with the regulation, as it holds up the idea of dismembering the large States.

Mr. BUTLER. If new States were to be erected without the consent of the dismembered States, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new States.

Doctor JOHNSON agreed in general with the ideas of Mr. SHERMAN; but was afraid that, as the clause stood, Vermont would be subjected to New York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

Mr. LANGDON said his objections were connected with the case of Vermont. If they are not taken in, and remain exempt from taxes, it would prove of great injury to New Hampshire and the other neighbouring States.

Mr. DICKINSON hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small States to secure the large ones in their extensive claims of territory.

Mr. WILSON. When the *majority* of a State wish to divide they can do so. The aim of those in opposition to the article, he perceived, was that the General Government should abet the *minority*, and by that means divide a State against its own consent.

Mr. GOUVERNEUR MORRIS. If the forced division of the

States is the object of the new system, and is to be pointed against one or two States, he expected the gentlemen from these would pretty quickly leave us.

Adjourned.

THURSDAY, AUGUST 30TH.

In Convention,—Article 17, being resumed, for a question on it, as amended by Mr. GOUVERNEUR MORRIS's substitute,—

Mr. CARROLL moved to strike out so much of the Article as requires the consent of the State to its being divided. He was aware that the object of this pre-requisite might be to prevent domestic disturbances; but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no guard was provided for the right of the United States to the back lands. He suggested, that it might be proper to provide, that nothing in the Constitution should affect the right of the United States to lands ceded by Great Britain in the treaty of peace; and proposed a commitment to a member from each State. He assured the House, that this was a point of a most serious nature. It was desirable, above all things, that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

Mr. L. MARTIN seconded the motion for a commitment.

Mr. RUTLEDGE. Is it to be supposed that the States are to be cut up without their own consent? The case of Vermont will probably be particularly provided for. There could be no room to fear that Virginia or North Carolina would call on the United States to maintain their government over the mountains.

Mr. WILLIAMSON said that North Carolina was well disposed to give up her western lands; but attempts at com-

pulsion were not the policy of the United States. He was for doing nothing in the Constitution, in the present case; and for leaving the whole matter *in statu quo*.

Mr. WILSON was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of the new States as heretofore. He knew nothing that would give greater or juster alarm than the doctrine, that a political society is to be torn asunder without its own consent.

On Mr. CARROLL's motion for commitment,—

New Jersey, Delaware, Maryland, aye — 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no — 8.

Mr. SHERMAN moved to postpone the substitute for Article 17, agreed to yesterday, in order to take up the following amendment:

“The Legislature shall have power to admit other States into the Union; and new States to be formed by the division or junction of States now in the Union with the consent of the Legislature of such States.” [The first part was meant for the case of Vermont, to secure its admission.]

On the question, it passed in the negative,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, South Carolina, aye — 5; New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, no — 6.

Doctor JOHNSON moved to insert the words, “hereafter formed, or,” after the words, “shall be,” in the substitute for Article 17, [the more clearly to save Vermont, as being already formed into a State, from a dependence on the consent of New York for her admission.] The motion was agreed to,—Delaware and Maryland only, dissenting.

Mr. GOUVERNEUR MORRIS moved to strike out the word “limits,” in the substitute, and insert the word “jurisdiction.” [This also was meant to guard the case of Vermont; the jurisdiction of New York not extending over

Vermont, which was in the exercise of sovereignty, though Vermont was within the asserted limits of New York.]

On this question,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, aye — 7; New Jersey, North Carolina, South Carolina, Georgia, no — 4.

Mr. L. MARTIN, urged the unreasonableness of forcing and guaranteeing the people of Virginia beyond the mountains, the Western people of North Carolina and Georgia, and the people of Maine, to continue under the States now governing them, without the consent of those States to their separation. Even if they should become the *majority*, the majority of *counties*, as in Virginia, may still hold fast the dominion over them. Again the majority may place the seat of government entirely among themselves, and for their own convenience; and still keep the injured parts of the States in subjection, under the guarantee of the General government against domestic violence. He wished Mr. WILSON had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the great States were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones. It was said yesterday, by Mr. GOUVERNEUR MORRIS, that if the large States were to be split to pieces without their consent, their Representatives here would take their leave. If the small States are to be required to guarantee them in this manner, it will be found that the Representatives of other States will, with equal firmness, take their leave of the Constitution on the table.

It was moved by Mr. L. MARTIN to postpone the substituted article, in order to take up the following: "The Legislature of the United States shall have power to erect new States within, as well as without the territory claimed by the several States, or either of them; and admit the

same into the Union: provided that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of peace;" which passed in the negative,— New Jersey, Delaware, and Maryland, only, aye.

On the question to agree to Mr. GOUVERNEUR MORRIS'S substituted article, as amended, in the words following: "New States may be admitted by the Legislature into the Union; but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States, without the consent of the Legislature of such State, as well as of the general Legislature,—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 8; New Jersey, Delaware, Maryland, no — 3.

Mr. DICKINSON moved to add the following clause to the last:

"Nor shall any State be formed by the junction of two or more States, or parts thereof, without the consent of the Legislature of such States, as well as of the Legislature of the United States;" which was agreed to without a count of the votes.

Mr. CARROLL moved to add: "Provided, nevertheless, that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the treaty of peace." This, he said, might be understood as relating to lands not claimed by any particular States, but he had in view also some of the claims of particular States.

Mr. WILSON was against the motion. There was nothing in the Constitution affecting, one way or the other, the claims of the United States; and it was best to insert nothing, leaving every thing on that litigated subject *in statu quo*.

Mr. MADISON considered the claim of the United States as in fact favoured by the jurisdiction of the Judicial power of the United States over controversies to which

they should be parties. He thought it best, on the whole, to be silent on the subject. He did not view the proviso of Mr. CARROLL as dangerous; but to make it neutral and fair, it ought to go further, and declare that the claims of particular States also should not be affected.

Mr. SHERMAN thought the proviso harmless, especially with the addition suggested by Mr. MADISON in favour of the claims of particular States.

Mr. BALDWIN did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that if Georgia has gained much by the cession in the treaty of peace, she was in danger during the war of a *Uti possedetis*.

Mr. RUTLEDGE thought it wrong to insert a proviso, where there was nothing which it could restrain, or on which it could operate.

Mr. CARROLL withdrew his motion and moved the following:

“Nothing in this Constitution shall be construed to alter the claims of the United States, or of the individual States, to the Western territory; but all such claims shall be examined into, and decided upon, by the Supreme Court of the United States.”

Mr. GOUVERNEUR MORRIS moved to postpone this, in order to take up the following:

“The Legislature shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution contained, shall be so construed as to prejudice any claims, either of the United States or of any particular State.” The postponement agreed to, *nem. con.*

Mr. L. MARTIN moved to amend the proposition of Mr. GOUVERNEUR MORRIS, by adding: “But all such claims may be examined into, and decided upon, by the Supreme Court of the United States.”

Mr. GOUVERNEUR MORRIS. This is unnecessary, as all

suits to which the United States are parties are already to be decided by the Supreme Court.

Mr. L. MARTIN. It is proper, in order to remove all doubts on this point.

On the question on Mr. L. MARTIN's amendatory motion, —

New Jersey, Maryland, aye — 2 ; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, no — 6. States not further called, the negatives being sufficient, and the point being given up.

The motion of Mr. GOUVERNEUR MORRIS was then agreed to, Maryland alone dissenting.

Article 18, being taken up, the word "foreign" was struck out, *nem. con.* as superfluous being implied in the term "invasion."

Mr. DICKINSON moved to strike out, "on the application of its Legislature, against." He thought it of essential importance to the tranquillity of the United States, that they should in all cases suppress domestic violence, which may proceed from the State Legislature itself, or from disputes between the two branches where such exist.

Mr. DAYTON mentioned the conduct of Rhode Island as showing the necessity of giving latitude to the power of the United States on this subject.

On the question, —

New Jersey, Pennsylvania, Delaware, aye — 3; New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 8.

On a question for striking out "domestic violence," and inserting "insurrections," it passed in the negative, —

New Jersey, Virginia, North Carolina, South Carolina, Georgia, aye — 5; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, no — 6.

Mr. DICKINSON moved to insert the words, "or Executive," after the words, "application of its Legislature." The occasion itself, he remarked, might hinder the Legislature from meeting.

On this question,—

New Hampshire, Connecticut, New Jersey Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, aye 8; Massachusetts, Virginia, no — 2; Maryland, divided.

Mr. L. MARTIN moved to subjoin to the last amendment the words, “in the recess of the Legislature.” On which question, Maryland only, aye.

On the question on the last clause, as amended,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Delaware, Maryland, no — 2.

Article 19, was then taken up.

Mr. GOUVERNEUR MORRIS suggested, that the Legislature should be left at liberty to call a Convention whenever they pleased.

The Article was agreed to, *nem. con.*

Article 20 was then taken up. The words “or affirmation,” were added, after “oath.”

Mr. PINCKNEY moved to add to the Article: “but no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States.”

Mr. SHERMAN thought it unnecessary, the prevailing liberality being a sufficient security against such tests.

Mr. GOUVERNEUR MORRIS and General PINCKNEY approved the motion.

The motion was agreed to, *nem. con.*, and then the whole article,—North Carolina only, no; and Maryland, divided.

Article 21, being then taken up: “The ratifications of the Conventions of — States shall be sufficient for organizing this Constitution.”

Mr. WILSON proposed to fill the blank with “seven,” that being a majority of the whole number, and sufficient for the commencement of the plan.

Mr. CARROLL moved to postpone the Article, in order to take up the Report of the Committee of eleven (see the twenty-eighth of August) and on the question,—

New Jersey, Delaware, Maryland, aye — 8; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no — 8.

Mr. GOUVERNEUR MORRIS thought the blank ought to be filled in a two-fold way, so as to provide for the event of the ratifying States being contiguous, which would render a smaller number sufficient; and the event of their being dispersed, which would require a greater number for the introduction of the Government.

Mr. SHERMAN observed that the States being now confederated by articles which require unanimity in changes, he thought the ratification, in this case, of ten States at least ought to be made necessary.

Mr. RANDOLPH was for filling the blank with "nine," that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

Mr. WILSON mentioned "eight," as preferable.

Mr. DICKINSON asked, whether the concurrence of Congress is to be essential to the establishment of the system — whether the refusing States in the Confederacy could be deserted — and whether Congress could concur in contravening the system under which they acted?

Mr. MADISON remarked, that if the blank should be filled with "seven," "eight," or "nine," the Constitution as it stands might be put in force over the whole of the people, though less than a majority of them should ratify it.

Mr. WILSON. As the Constitution stands, the States only which ratify can be bound. We must, he said, in this case, go to the original powers of society. The house on fire must be extinguished, without a scrupulous regard to ordinary rights.

Mr. BUTLER was in favor of "nine." He revolted at the idea that one or two States should restrain the rest from consulting their safety.

Mr. CARROLL moved to fill the blank with, "the thir-

teen ;" unanimity being necessary to dissolve the existing Confederacy, which had been unanimously established.

Mr. KING thought this amendment necessary ; otherwise, as the Constitution now stands, it will operate on the whole, though ratified by a part only.

Adjourned.

FRIDAY, AUGUST 31ST.

In Convention,— Mr. KING moved to add, to the end of Article 21, the words, "between the said States ;" so as to confine the operation of the Government to the States ratifying it.

On the question, nine States voted in the affirmative ; Maryland, no ; Delaware, absent.

Mr. MADISON proposed to fill the blank in the Article with, "any seven or more States entitled to thirty-three members at least in the House of Representatives according to the allotment made in the third Section of Article 4." This, he said, would require the concurrence of a majority of both the States and the people.

Mr. SHERMAN doubted the propriety of authorizing less than all the States to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the States may concur, and on that supposition it is needless to hold out a breach of faith.

Mr. CLYMER and Mr. CARROLL moved to postpone the consideration of Article 21, in order to take up the Reports of Committees not yet acted on. On this question the States were equally divided,—New Hampshire, Pennsylvania, Delaware, Maryland, Georgia, aye — 5 ; Massachusetts, New Jersey, Virginia, North Carolina, South Carolina, no — 5 ; Connecticut, divided.

Mr. GOUVERNEUR MORRIS moved to strike out, "conventions of the," after "ratifications;" leaving the States to pursue their own modes of ratification.

Mr. CARROLL mentioned the mode of altering the Con-

stitution of Maryland pointed out therein, and that no other mode could be pursued in that State.

Mr. KING thought that striking out "conventions," as the requisite mode, was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the Legislatures, will succeed; and if not positively required by the plan, its enemies will oppose that mode.

Mr. GOUVERNEUR MORRIS said, he meant to facilitate the adoption of the plan, by leaving the modes approved by the several State Constitutions to be followed.

Mr. MADISON considered it best to require Conventions; among other reasons for this, that the powers given to the General Government being taken from the State Governments, the Legislatures would be more disinclined than Conventions composed in part at least of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting, the ratification. The difficulty in Maryland was no greater than in other States, where no mode of change was pointed out by the Constitution, and all officers were under oath to support it. The people were, in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the Bills of Rights, that first principles might be resorted to.

Mr. McHENRY said, that the officers of government in Maryland were under oath to support the mode of alteration prescribed by the Constitution.

Mr. GORHAM urged the expediency of "Conventions;" also Mr. PINCKNEY, for reasons formerly urged on a discussion of this question.

Mr. L. MARTIN insisted on a reference to the State Legislatures. He urged the danger of commotions from a resort to the people and to first principles; in which the Government might be on one side, and the people on the other. He was apprehensive of no such consequences, however, in Maryland, whether the Legislature or the people

should be appealed to. Both of them would be generally against the Constitution. He repeated also the peculiarity in the Maryland Constitution.

Mr. KING observed, that the Constitution of Massachusetts was made unalterable till the year 1790; yet this was no difficulty with him. The State must have contemplated a recurrence to first principles, before they sent deputies to this Convention.

Mr. SHERMAN moved to postpone Article 21, and to take up Article 22; on which question,—

Connecticut, Pennsylvania, Delaware, Maryland, Virginia, aye—5; New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no—6.

On Mr. GOUVERNEUR MORRIS's motion, to strike out "Conventions of the," it was negatived,—

Connecticut, Pennsylvania, Maryland, Georgia, aye—4; New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, South Carolina, no—6.

On the question for filling the blank in Article 21, with "thirteen," moved by Mr. CARROLL and Mr. L. MARTIN,—all the States were no, except Maryland.

Mr. SHERMAN and Mr. DAYTON moved to fill the blank with "ten."

Mr. WILSON supported the motion of Mr. MADISON, requiring a majority both of the people and of States.

Mr. OLYMER was also in favor of it.

Colonel MASON was for preserving ideas familiar to the people. Nine States had been required in all great cases under the Confederation, and that number was on that account preferable.

On the question for "ten,"—

Connecticut, New Jersey, Maryland, Georgia, aye—4; New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, no—7.

On the question for "nine,"—

New Hampshire, Massachusetts, Connecticut, New Jer-

sey, Pennsylvania, Delaware, Maryland, Georgia, aye — 8; Virginia, North Carolina, South Carolina, no — 3.

Article 21, as amended, was then agreed to by all the States, Maryland excepted, and Mr. JENIFER being, aye.

Article 22, was then taken up, to wit: "This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a Convention chosen in each State, under the recommendation of its Legislature, in order to receive the ratification of such Convention."

Mr. GOUVERNEUR MORRIS and Mr. PINCKNEY moved to strike out the words, "for their approbation."

On this question,—

New Hampshire, Connecticut, New Jersey,* Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye — 8; Massachusetts, Maryland, Georgia, no — 3.

Mr. GOUVERNEUR MORRIS and Mr. PINCKNEY then moved, to amend the Article so as to read:

"This Constitution shall be laid before the United States in Congress assembled; and it is the opinion of this Convention that it should afterwards be submitted to a Convention chosen in each State, in order to receive the ratification of such Convention; to which end the several Legislatures ought to provide for the calling Conventions within their respective States as speedily as circumstances will permit."

Mr. GOUVERNEUR MORRIS said his object was to impress in stronger terms the necessity of calling Conventions, in order to prevent enemies to the plan from giving it the go by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees, the State officers, and those interested in the State Governments, will intrigue, and turn the popular current against it.

* In the printed Journal, New Jersey, no.

Mr. L. MARTIN believed Mr. MORRIS to be right, that after a while the people would be against it; but for a different reason from that alleged. He believed they would not ratify it, unless hurried into it by surprise.

Mr. GERRY enlarged on the idea of Mr. L. MARTIN, in which he concurred; represented the system as full of vices; and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

On the question on Mr. GOUVERNEUR MORRIS's and Mr. PINCKNEY's motion,—

New Hampshire Massachusetts, Pennsylvania, Delaware, aye — 4; Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 7.

Mr. GERRY moved to postpone Article 22.

Colonel MASON seconded the motion declaring that he would sooner chop off his right hand, than put it to the Constitution as it now stands. He wished to see some points, not yet decided, brought to a decision, before being compelled to give a final opinion on this Article. Should these points be improperly settled, his wish would then be to bring the whole subject before another General Convention.

Mr. GOUVERNEUR MORRIS was ready for a postponement. He had long wished for another Convention, that will have the firmness to provide a vigorous Government, which we are afraid to do.

Mr. RANDOLPH stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the State Conventions should be at liberty to propose amendments, to be submitted to another General Convention, which may reject or incorporate them as may be judged proper.

On the question for postponing,—

New Jersey, Maryland, North Carolina, aye — 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, no — 8.

On the question on Article 22, ten States, aye; Maryland, no.

Article 23, being taken up, as far as the words, "assigned by Congress," inclusive, was agreed to, *nem. con.*, the blank having been first filled with the word "nine," as of course.

On the motion for postponing the residue of the clause, "concerning the choice of the President, &c."—

Massachusetts, Delaware, Virginia, North Carolina, aye — 4; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, Georgia, no — 7.

Mr. GOUVERNEUR MORRIS then moved to strike out the words, "choose the President of the United States, and;" this point, of choosing the President, not being yet finally determined; and on this question,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina,* Georgia, aye — 9; New Hampshire, no — 1; Maryland, divided.

Article 23, as amended, was then agreed to, *nem. con.*

The report of the Grand Committee of eleven, made by Mr. SHERMAN, was then taken up (see the twenty-eighth of August).

On the question to agree to the following clause, to be inserted after Article 7, Sect. 4, "nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another,"— agreed to, *nem. con.*

On the clause, "or oblige vessels bound to or from any State to enter, clear, or pay duties, in another,"—

Mr. MADISON thought the restriction would be inconvenient; as in the river Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvania.

Mr. FITZSIMONS admitted that it might be inconvenient, but thought it would be a greater inconvenience, to re-

* In the printed Journal, South Carolina, no.

quire vessels bound to Philadelphia to enter below the jurisdiction of the State.

Mr. GORHAM and Mr. LANGDON contended, that the Government would be so fettered by this clause, as to defeat the good purpose of the plan. They mentioned the situation of the trade of Massachusetts and New Hampshire, the case of Sandy Hook, which is in the State of New Jersey, but where precautions against smuggling into New York ought to be established by the General Government.

Mr. MCHENBY said, the clause would not screen a vessel from being obliged to take an officer on board, as a security for due entry, &c.

Mr. CARROLL was anxious that the clause should be agreed to. He assured the House, that this was a tender point in Maryland.

Mr. JENIFER urged the necessity of the clause in the same point of view.

On the question for agreeing to it,—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye — 8; New Hampshire, South Carolina, no — 2.

The word “tonnage,” was struck out, *nem con.*, as comprehended in “duties.”

On the question on the clause of the Report, “and all duties, imposts and excises, laid by the Legislature, shall be uniform throughout the United States,” it was agreed to, *nem. con.**

On motion of Mr. SHERMAN, it was agreed to refer such parts of the Constitution as have been postponed, and such parts of Reports as have not been acted on, to a Committee of a member from each State; the Committee, appointed by ballot, being, Mr. GILMAN, Mr. KING, Mr. SHERMAN, Mr. BREARLY, Mr. GOUVERNEUR MORRIS, Mr. DICKINSON, Mr. CARROLL, Mr. MADISON, Mr. WILLIAMSON, Mr. BUTLER, and Mr. BALDWIN.

Adjourned.

* In the printed Journal, New Hampshire and South Carolina entered in the negative.

SATURDAY, SEPTEMBER 1ST.

In Convention,—Mr. BREARLY, from the Committee of eleven to which were referred yesterday the postponed part of the Constitution, and parts of Reports not acted upon, made the following partial report :

“That in lieu of Article 6, Sect. 9, the words following be inserted, viz : ‘The members of each House shall be ineligible to any civil office under the authority of the United States, during the time for which they shall respectively be elected ; and no person holding an office under the United States shall be a member of either House during his continuance in office.’”

Mr. RUTLEDGE, from the Committee to whom were referred sundry propositions, (see twenty-ninth of August) together with Article 16, reported that the following additions be made to the Report, viz :

“After the word ‘States,’ in the last line on the margin of the third page (see the printed Report,) add, ‘to establish uniform laws on the subject of bankruptcies.’

“And insert the following as Article 16, viz : ‘Full faith and credit ought to be given in each State to the public acts, records, and judicial proceedings of every other State ; and the Legislature shall, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect which judgments obtained in one State, shall have in another.’”

After receiving these Reports, the House
Adjourned.

MONDAY, SEPTEMBER 3D.

In Convention,—Mr. GOUVERNEUR MORRIS moved to amend the Report concerning the respect to be paid to acts, records, &c. of one State in other States (see the first of September) by striking out, “judgments obtained in one State shall have in another ;” and to insert the word “thereof,” after the word “effect.”

Col. MASON favored the motion, particularly if the "effect" was to be restrained to judgments and judicial proceedings.

Mr. WILSON remarked, that if the Legislature were not allowed to *declare the effect*, the provision would amount to nothing more than what now takes place among all independent nations.

Doctor JOHNSON thought the amendment, as worded, would authorize the General Legislature to declare the effect of Legislative acts of one State in another State.

Mr. RANDOLPH considered it as strengthening the general objection against the plan, that its definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. He was for not going further than the Report, which enables the Legislature to provide for the effect of *judgments*.

On the amendment, as moved by Mr. GOUVERNEUR MORRIS,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, aye — 6 ; Maryland, Virginia, Georgia, no — 3.

On motion of Mr. MADISON, the words, "ought to," were struck out, and "shall" inserted; and "shall," between "Legislature" and "by general laws," struck out, and "may" inserted, *nem. con.*

On the question to agree to the Report as amended, viz: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and the Legislature may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof,"— it was agreed to without a count of the States.

The clause in the Report, "To establish uniform laws on the subject of bankruptcies," being taken up,—

Mr. SHERMAN observed, that bankruptcies were in some cases punishable with death, by the laws of England; and

he did not choose to grant a power by which that might be done here.

Mr. GOUVERNEUR MORRIS said, this was an extensive and delicate subject. He would agree to it because he saw no danger of abuse of the power by the Legislature of the United States.

On the question to agree to the clause, Connecticut alone was in the negative.

Mr. PINCKNEY moved to postpone the Report of the Committee of eleven (see the first of September) in order to take up the following:

“The members of each House shall be incapable of holding any office under the United States for which they, or any other for their benefit, receive any salary, fees or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively.”

He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the Legislature to the honourable offices of Government, as resembling the policy of the Romans, in making the temple of Virtue the road to the temple of Fame.

On this question,—

Pennsylvania, North Carolina, aye—2; New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no—8.

Mr. KING moved to insert the word “created,” before the word “during,” in the Report of the Committee. This, he said, would exclude the members of the first legislature under the Constitution, as most of the offices would then be created.

Mr. WILLIAMSON seconded the motion. He did not see why members of the Legislature should be ineligible to *vacancies* happening during the term of their election.

Mr. SHERMAN was for entirely incapacitating members of the Legislature. He thought their eligibility to offices

would give too much influence to the Executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as *created*, during the term of the member. He mentioned also the expedient by which the restriction could be evaded, to wit; an existing officer might be translated to an office created, and a member of the Legislature be then put into the office vacated.

Mr. GOUVERNEUR MORRIS contended that the eligibility of members to office would lessen the influence of the Executive. If they cannot be appointed themselves, the Executive will appoint their relations and friends, retaining the service and votes of the members for his purposes in the Legislature. Whereas the appointment of the members deprives him of such an advantage.

Mr. GERRY thought the eligibility of members would have the effect of opening batteries against good officers, in order to drive them out and make way for members of the Legislature.

Mr. GORHAM was in favor of the amendment. Without it, we go further than has been done in any of the States, or indeed any other country. The experience of the State Governments, where there was no such ineligibility, proved that it was not necessary; on the contrary, that the eligibility was among the inducements for fit men to enter into the Legislative service.

Mr. RANDOLPH was inflexibly fixed against inviting men into the Legislature by the prospect of being appointed to offices.

Mr. BALDWIN remarked that the example of the States was not applicable. The Legislatures there are so numerous, that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Colonel MASON. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr. WILSON considered the exclusion of members of the Legislature as increasing the influence of the Executive, as

observed by Mr. GOUVERNEUR MORRIS; at the same time that it would diminish the general energy of the Government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

Mr. PINCKNEY. The first Legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the report of the Committee, or even the amendment be agreed to, the great offices, even those of the Judiciary department, which are to continue for life, must be filled, while those most capable of filling them will be under a disqualification.

On the question on Mr. KING's motion,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, aye — 5; Connecticut, New Jersey, Maryland, South Carolina, Georgia, no — 5.

The amendment being thus lost, by the equal division of the States, Mr. WILLIAMSON moved to insert the words "created, or the emoluments whereof shall have been increased," before the word "during," in the Report of the Committee.

Mr. KING seconded the motion, and on the question,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, aye — 5; Connecticut, New Jersey, Maryland, South Carolina, no — 4; Georgia, divided.

The last clause, rendering a seat in the Legislature, and an office, incompatible, was agreed to, *nem. con.*

The Report, as amended and agreed to, is as follows:—

"The members of each House shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person holding any office under the United States shall be a member of either House during his continuance in office."

Adjourned.

TUESDAY, SEPTEMBER 4TH.

In Convention, — Mr. BEEARLY, from the Committee of Eleven made a further partial Report as follows:

“The Committee of eleven, to whom sundry resolutions, &c., were referred on the thirty-first of August, report, that in their opinion the following additions and alterations should be made to the Report before the Convention, viz:*

“1. The first clause of Article 7, Section 1, to read as follows: ‘The Legislature shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.’

“2. At the end of the second clause of Article 7, Section 1, add, ‘and with the Indian tribes.’

“3. In the place of the 9th Article, Section 1, to be inserted: ‘The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present.’

“4. After the word ‘Excellency,’ in Section 1, Article 10, to be inserted: ‘He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected in the following manner, viz: Each State shall appoint, in such manner as its Legislature may direct, a number of Electors equal to the whole number of Senators and members of the House of Representatives to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat

*This is an exact copy. The variations in that in the printed Journal, are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.

of the General Government, directed to the President of the Senate. The President of the Senate shall in that House open all the certificates, and the votes shall be then and there counted. The person having the greatest number of votes shall be the President, if such number be a majority of that of the Electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President; and in every case after the choice of the President, the person having the greatest number of votes shall be Vice President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.'

"5. Section 2. 'No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident within the United States.'

"6. Section 3. 'The Vice President shall be *ex officio* President of the Senate; except when they sit to try the impeachment of the President; in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president *pro tempore*. The Vice President, when acting as President of the Senate, shall not have a vote unless the House be equally divided.'

"7. Section 4. 'The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and

consent of the Senate, shall appoint ambassadors, and other public ministers, Judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two-thirds of the members present.'

"8. After the words, 'into the service of the United States,' in Section 2, Article 10, add 'and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.'

"9. The latter part of Section 2, Article 10, to read as follows: 'He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery; and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the Vice President shall exercise those powers and duties, until another President be chosen, or until the inability of the President be removed.'"

The first clause of the Report was agreed to, *nem. con.*

The second clause was also agreed to, *nem. con.*

The third clause was postponed, in order to decide previously on the mode of electing the President.

The fourth clause was accordingly taken up.

Mr. GORHAM disapproved of making the next highest after the President the Vice President, without referring the decision to the Senate in case the next highest should have less than a majority of votes. As the regulation stands, a very obscure man with very few votes may arrive at that appointment.

Mr. SHERMAN said the object of this clause of the Report of the Committee was to get rid of the ineligibility which was attached to the mode of election by the Legislature, and to render the Executive independent of the Legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded

against in that case; and he had no objection to requiring the Vice President to be chosen in like manner, where the choice was not decided by a majority in the first instance.

Mr. MADISON was apprehensive that by requiring both the President and Vice President to be chosen out of the highest candidates, the attention of the electors would be turned too much to making candidates, instead of giving their votes in order to a definitive choice. Should this turn be given to the business, the election would in fact be consigned to the Senate altogether. It would have the effect, at the same time, he observed, of giving the nomination of the candidates to the largest States.

Mr. GOUVERNEUR MORRIS concurred in, and enforced the remarks of Mr. MADISON.

Mr. RANDOLPH and Mr. PINCKNEY wished for a particular explanation, and discussion, of the reasons for changing the mode of electing the Executive.

Mr. GOUVERNEUR MORRIS said, he would give the reasons of the Committee, and his own. The first was the danger of intrigue and faction, if the appointment should be made by the Legislature. The next was the inconvenience of an ineligibility required by that mode in order to lessen its evils. The third was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the Legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the Legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was the indispensable necessity of making the Executive independent of the Legislature. As the electors would vote at the same time, throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them. A conclusive reason for making the Senate, instead of the Supreme

Court, the judge of impeachments, was, that the latter was to try the President, after the trial of the impeachment.

Col. MASON confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable, however, to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

Mr. BUTLER thought the mode not free from objections; but much more so than an election by the Legislature, where, as in elective monarchies cabal faction and violence would be sure to prevail.

Mr. PINCKNEY stated as objections to the mode,—first, that it threw the whole appointment in fact, into the hands of the Senate. Secondly, the electors will be strangers to the several candidates, and of course unable to decide on their comparative merits. Thirdly, it makes the Executive re-eligible, which will endanger the public liberty. Fourthly, it makes the same body of men which will, in fact, elect the President, his judges in case of an impeachment.

Mr. WILLIAMSON had great doubts whether the advantage of re-eligibility, would balance the objection to such a dependence of the President on the Senate for his re-appointment. He thought, at least, the Senate ought to be restrained to the *two* highest on the list.

Mr. GOUVERNEUR MORRIS said, the principal advantage aimed at was, that of taking away the opportunity for cabal. The President may be made, if thought necessary, ineligible, on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr. BALDWIN thought the plan not so objectionable, when well considered, as at first view. The increasing intercourse among the people of the States would render important characters less and less unknown; and the Senate would, consequently be less and less likely to have the eventual appointment thrown into their hands.

Mr. WILSON. This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan, on the whole, a valuable improvement on the former. It gets rid of one great evil, that of cabal and corruption; and continental characters, will multiply as we more and more coalesce, so as to enable the Electors in every part of the Union to know and judge of them. It clears the way also for a discussion of the question of re-eligibility, on its own merits, which the former mode of election seemed to forbid. He thought it might be better, however, to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the candidates. The eventual election by the Legislature would not open cabal anew, as it would be restrained to certain designated objects of choice; and as these must have had the previous sanction of a number of the States; and if the election be made as it ought, as soon as the votes of the Electors are opened, and it is known that no one has a majority of the whole, there can be little danger of corruption. Another reason for preferring the Legislature to the Senate in this business was, that the House of Representatives will be so often changed as to be free from the influence, and faction, to which the permanence of the Senate may subject that branch.

Mr. RANDOLPH, preferred the former mode of constituting the Executive; but if the change was to be made, he wished to know why the eventual election was referred to the *Senate*, and not to the *Legislature*? He saw no necessity for this, and many objections to it. He was apprehensive, also, that the advantage of the eventual appointment, would fall into the hands of the States near the seat of government.

Mr. GOUVERNEUR MORRIS said the *Senate* was preferred because fewer could then say to the President, you owe

your appointment to us. He thought the President would not depend so much on the Senate for his re-appointment, as on his general good conduct.

The further consideration of the Report was postponed, that each member might take a copy of the remainder of it.

The following motion was referred to the Committee of Eleven, to wit, to prepare and report a plan for defraying the expenses of the Convention.

* Mr. PINCKNEY moved a clause declaring, that each House should be judge of the privileges of its own members.

Mr. GOUVERNEUR MORRIS seconded the motion.

Mr. RANDOLPH and Mr. MADISON expressed doubts as to the propriety of giving such a power, and wished for a postponement.

Mr. GOUVERNEUR MORRIS thought it so plain a case, that no postponement could be necessary.

Mr. WILSON thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as courts, &c. Every court is the judge of its own privileges.

Mr. MADISON distinguished between the power of judging of privileges previously and duly established, and the effect of the motion, which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law* the privileges of each House, than to allow each House to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the Executive.

Adjourned.

WEDNESDAY, SEPTEMBER 5TH.

In Convention,—Mr. BREARLY, from the Committee of Eleven, made a further Report, as follows :

“1. To add to the clause, ‘to declare war,’ the words, ‘and grant letters of marque and reprisal.’

* This motion is not contained in the printed Journal.

"2. To add to the clause, 'to raise and support armies,' the words, 'but no appropriation of money to that use shall be for a longer term than two years.'

"3. Instead of Sect. 12, Article 6, say: 'All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the Treasury, but in consequence of appropriations made by law.'

"4. Immediately before the last clause of Section 1, Article 7, insert 'To exercise exclusive legislation on all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of the Legislature, become the seat of the government of the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.'

"5. 'To promote the progress of science and the useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries.'

This report being taken up, the first clause was agreed to, *nem. con.*

To the second clause Mr. GERRY objected, that it admitted of appropriations to an army for two years, instead of one; for which he could not conceive a reason; that it implied there was to be a standing army, which he inveighed against, as dangerous to liberty — as unnecessary even for so great an extent of country as this — and if necessary, some restriction on the number and duration ought to be provided. Nor was this a proper time for such an innovation. The people would not bear it.

Mr. SHERMAN remarked, that the appropriations were permitted only, not required to be for two years. As the Legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no session within the time necessary to renew them. He should himself, he said, like a reasonable

restriction on the number and continuance of an army in time of peace.

The second clause was then agreed to, *nem. con.*

The third clause Mr. GOUVERNEUR MORRIS moved to postpone. It had been agreed to in the Committee on the ground of compromise; and he should feel himself at liberty to dissent from it, if on the whole he should not be satisfied with certain other parts to be settled.

Mr. PINCKNEY seconded the motion.

Mr. SHERMAN was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing, —

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye — 9; Massachusetts, Virginia, no — 2.

So much of the fourth clause as related to the seat of government was agreed to, *nem. con.*

On the residue, to wit, “to exercise like authority over all places purchased for forts, &c.”

Mr. GERBY contended that this power might be made use of to enslave any particular State by buying up its territory, and that the strong holds proposed would be a means of awing the State into an undue obedience to the General Government.

Mr. KING thought himself, the provision unnecessary, the power being already involved; but would move to insert, after the word “purchased,” the words, “by the consent of the Legislature of the State.” This would certainly make the power safe.

Mr. GOUVERNEUR MORRIS seconded the motion, which was agreed to, *nem. con.*; as was the residue of the clause as amended.

The fifth clause was agreed to, *nem. con.*

The following Resolution and order being reported from the Committee of Eleven, to wit:

Resolved, that the United States in Congress be re-

quested to allow, and cause to be paid, to the Secretary and officers of this Convention, such sums, in proportion to their respective times of service as are allowed to the Secretary and similar officers of Congress.

“Ordered, that the Secretary make out and transmit to the Treasury office of the United States, an account for the said services and for the incidental expenses of this Convention.”

The resolution and order were separately agreed to, *nem. con.*

Mr. GERRY gave notice that he should move to reconsider Articles 19, 20, 21, 22.

Mr. WILLIAMSON gave like notice as to the Article fixing the number of Representatives, which he thought too small. He wished, also, to allow Rhode Island more than one, as due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

The report made yesterday as to the appointment of the Executive being then taken up, —

Mr. PINCKNEY renewed his opposition to the mode; arguing, first, that the electors will not have sufficient knowledge of the fittest men and will be swayed by an attachment to the eminent men of their respective States. Hence, secondly, the dispersion of the votes would leave the appointment with the Senate, and as the President's re-appointment will thus depend on the Senate, he will be the mere creature of that body. Thirdly, he will combine with the Senate against the House of Representatives. Fourthly, this change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

Mr. GERRY did not object to this plan of constituting the Executive in itself, but should be governed in his final vote by the powers that may be given to the President.

Mr. RUTLEDGE was much opposed to the plan reported

by the Committee. It would throw the whole power into the Senate. He was also against a re-eligibility. He moved to postpone the Report under consideration, and take up the original plan of appointment by the Legislature, to wit: "He shall be elected by joint ballot by the Legislature, to which election a majority of the votes of the members present shall be required. He shall hold his office during the term of seven years; but shall not be elected a second time."

On this motion to postpone, —

North Carolina, South Carolina, aye — 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no — 8; New Hampshire, divided.

Colonel MASON admitted that there were objections to an appointment by the Legislature, as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the Committee. First, it puts the appointment, in fact, into the hands of the Senate; as it will rarely happen that a majority of the whole vote will fall on any one candidate; and as the existing President will always be one of the five highest, his re-appointment will of course depend on the Senate. Secondly, considering the powers of the President and those of the Senate, if a coalition should be established between these two branches, they will be able to subvert the Constitution. The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words, "if such number be a majority of that of the Electors."

Mr. WILLIAMSON seconded the motion. He could not agree to the clause without some such modification. He preferred making the highest, though not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption and aristocracy.

Mr. GOUVERNEUR MORRIS thought the point of less

consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man; as each Elector is to give two votes, more than one-fourth will give a majority. Besides, as one vote is to be given to a man out of the State, and as this vote will not be thrown away, half the votes will fall on characters eminent and generally known. Again, if the President shall have given satisfaction, the votes will turn on him of course; and a majority of them will re-appoint him, without resort to the Senate. If he should be disliked, all disliking him would take care to unite their votes, so as to ensure his being supplanted.

Colonel MASON. Those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

Mr. SHERMAN reminded the opponents of the new mode proposed, that if the small States had the advantage in the Senate's deciding among the five highest candidates, the large States would have in fact the nomination of these candidates.

On the motion of Colonel MASON,—

Maryland,* North Carolina, aye; the other nine States, no.

Mr. WILSON moved to strike out "Senate," and insert the word "Legislature."

Mr. MADISON considered it a primary object, to render an eventual resort to any part of the Legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large States too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer; as the large States would predominate in the Legislature, which would have the final choice out of the candidates. Whereas, if the Senate, in which the small States predominate, should have the final

* In the printed Journal, Maryland, no.

choice, the concerted effort of the large States, would be to make the appointment in the first instance conclusive.

Mr. RANDOLPH. We have, in some revolutions of this plan, made a bold stroke for monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President, in addition to its other powers, to convert that body into a real and dangerous aristocracy.

Mr. DICKINSON was in favor of giving the eventual election to the Legislature, instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by Mr. WILSON,—

Pennsylvania, Virginia, South Carolina, aye — 3; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, no — 7; New Hampshire, divided.

Mr. MADISON and Mr. WILLIAMSON moved to strike out the word "majority," and insert "one-third;" so that the eventual power might not be exercised if less than a majority, but not less than one-third, of the Electors should vote for the same person.

Mr. GERRY objected, that this would put it in the power of three or four States to put in whom they pleased.

Mr. WILLIAMSON There are seven States which do not contain one-third of the people. If the Senate are to appoint, less than one-sixth of the people will have the power.

On the question,—

Virginia, North Carolina, aye; the other nine States, no.

Mr. GERRY suggested, that the eventual election should be made by six Senators and seven Representatives, chosen by joint ballot of both Houses.

Mr. KING observed, that the influence of the small States in the Senate was somewhat balanced by the influence of the large States in bringing forward the candidates,* and also by the concurrence of the small States in

*This explains the compromise alluded to by Mr. Gouverneur Morris. Col. Mason, Mr. Gerry, and other members from large States set great value on this privilege of originating money bills. Of this the members from the small States, with

the Committee in the clause vesting the exclusive origination of money bills in the House of Representatives.

Col. MASON moved to strike out the word "five," and insert the word "three," as the highest candidates for the Senate to choose out of.

Mr. GEBBY seconded the motion.

Mr. SHERMAN would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Col. MASON and Mr. GEBBY, — Virginia, North Carolina, aye; nine States, no.

Mr. SPAIGHT and Mr. RUTLEDGE moved to strike out "five," and insert "thirteen;" to which all the States disagreed, except North Carolina and South Carolina.

Mr. MADISON and Mr. WILLIAMSON moved to insert, after "Electors," the words, "who shall have balloted;" so that the non-voting Electors, not being counted, might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question, — Pennsylvania, Maryland, Virginia, North Carolina, aye — 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, South Carolina, Georgia, no — 7.

Mr. DICKINSON moved, in order to remove ambiguity from the intention of the clause, as explained by the vote, to add, after the words, "if such number be a majority of the whole number of the Electors," the word "appointed."

On this motion, — New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, aye — 9; Virginia, North Carolina, no — 2.

Col. MASON. As the mode of appointment is now regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the Government of Prussia to one which will put all power into the hands of

some from the large States who wished a high mounted Government, endeavoured to avail themselves, by making that privilege the price of arrangements in the Constitution favorable to the small States, and to the elevation of the Government.

seven or eight men, and fix an aristocracy worse than absolute monarchy.

The words, "and of their giving their votes," being inserted, on motion for that purpose, after the words, "The Legislature may determine the time of choosing and assembling the Electors," —

The House adjourned.

THURSDAY, SEPTEMBER 6TH.

In Convention, — Mr. KING and Mr. GERRY moved to insert in the fourth clause of the Report (see the 4th of Sept, page 654), after the words, "may be entitled in the Legislature," the words following: "But no person shall be appointed an Elector who is a member of the Legislature of the United States, or who holds any office of profit or trust under the United States;" which passed, *nem. con.*

Mr. GERRY proposed, as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature. This, he said, would relieve the President from his particular dependence on the Senate, for his continuance in office.

Mr. KING liked the idea, as calculated to satisfy particular members, and promote unanimity; and as likely to operate but seldom.

Mr. READ opposed it; remarking, that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

Mr. WILLIAMSON espoused it, as a reasonable precaution against the undue influence of the Senate.

Mr. SHERMAN liked the arrangement as it stood, though he should not be averse to some amendments. He thought, he said, that if the Legislature were to have the eventual

appointment, instead of the Senate, it ought to vote in the case by the States, — in favour of the small States, as the large States would have so great an advantage in nominating the candidates.

Mr. GOUVERNEUR MORRIS thought favourably of Mr. GERRY's proposition. It would free the President from being tempted, in naming to offices, to conform to the will of the Senate, and thereby virtually give the appointments to office to the Senate.

Mr. WILSON said, that he had weighed everything carefully the Report of the Committee for re-modelling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have, in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others, the officers of the Judiciary department. They are to make treaties; and they are to try all impeachments. In allowing them thus to make the Executive and Judiciary appointments, to be the court of impeachments, and to make treaties which are to be laws of the land, the Legislative, Executive and Judiciary powers are all blended in one branch of the Government. The power of making treaties involves the case of subsidies, and here, as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people, as he ought to be; but the minion of the Senate. He cannot even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate will, moreover, in all probability, be in constant session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate, sitting in conclave, can by holding up to their

respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of which they made a part.

Mr. GOUVERNEUR MORRIS expressed his wonder at the observations of Mr. WILSON, so far as they preferred the plan in the printed Report, to the new modification of it before the House; and entered into a comparative view of the two, with an eye to the nature of Mr. WILSON's objections to the last. By the first, the Senate, he observed, had a voice in appointing the President out of all of the citizens of the United States; by this they were limited to five candidates, previously nominated to them, with a probability of being barred altogether by the successful ballot of Electors. Here surely was no increase of power. They are now to appoint Judges, nominated to them by the President. Before, they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make treaties, as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the Judges must have been triable by them before. Wherein, then, lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

Mr. WILLIAMSON, replying to Mr. MORRIS, observed,

that the aristocratic complexion proceeds from the change in the mode of appointing the President, which makes him dependent on the Senate.

Mr. CLYMER said, that the aristocratic part, to which he could never accede, was that, in the printed plan, which gave the Senate the power of appointing to offices.

Mr. HAMILTON said, that he had been restrained from entering into the discussions, by his dislike of the scheme of government in general; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this, the President was a monster, elected for seven years, and ineligible afterwards; having great powers in appointments to office; and continually tempted, by this constitutional disqualification, to abuse them in order to subvert the Government. Although he should be made re-eligible, still, if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable, therefore, that some other mode of election should be devised. Considering the different views of different States, and the different districts, Northern, Middle, and Southern, he concurred with those who thought that the votes would not be concentrated, and that the appointment would consequently, in the present mode devolve on the Senate. The nomination to offices will give great weight to the President. Here, then, is a mutual connexion and influence, that will perpetuate the President, and aggrandize both him and the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. SPAIGHT and Mr. WILLIAMSON moved to insert

“seven,” instead of “four” years, for the term of the President.*

On this motion,—

New Hampshire, Virginia, North Carolina, aye — 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no — 8;

Mr. SPAIGHT and Mr. WILLIAMSON then moved to insert “six,” instead of “four.”

On which motion,—

North Carolina, South Carolina, aye — 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no — 9.

On the term “four,” all the States were aye, except North Carolina, no.

On the question on the fourth clause in the Report, for appointing the President by Electors, down to the words, “entitled in the Legislature,” inclusive,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, aye — 9; North Carolina, South Carolina, no — 2.

It was moved that the Electors meet at the seat of the General Government; which passed in the negative,—North Carolina only being, aye.

It was then moved to insert the words, “under the seal of the State,” after the word “transmit,” in the fourth clause of the Report; which was disagreed to; as was another motion to insert the words, “and who shall have given their votes,” after the word “appointed,” in the fourth clause of the Report, as added yesterday on motion of Mr. DICKINSON.

On several motions, the words, “in presence of the Senate and House of Representatives,” were inserted after the word “counted;” and the word “immediately,” before the word “choose;” and the words, “of the electors,” after the word “votes.”

* An ineligibility would have followed (though it would seem from the vote, not in the opinion of all) this prolongation of the term.

Mr. SPAIGHT said, if the election by Electors is to be crammed down, he would prefer their meeting altogether, and deciding finally without any reference to the Senate; and moved, "that the Electors meet at the seat of the General Government."

Mr. WILLIAMSON seconded the motion; on which all the States were in the negative, except North Carolina.

On motion, the words, "But the election shall be on the same day throughout the United States," were added, after the words, "transmitting their votes."

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 8; Massachusetts, New Jersey, Delaware, no — 8.

On the question on the sentence in the fourth clause, "if such number be a majority of that of the Electors appointed,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, Georgia, aye — 8; Pennsylvania, Virginia, North Carolina, no — 8.

On a question on the clause referring the eventual appointment of the President to the Senate,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, aye — 7; North Carolina, no. Here the call ceased.

Mr. MADISON made a motion requiring two-thirds at least of the Senate to be present at the choice of a President.

Mr. PINCKNEY seconded the motion.

Mr. GORHAM thought it a wrong principle to require more than a majority in any case. In the present, it might prevent for a long time any choice of a President.

On the question moved by Mr. MADISON and Mr. PINCKNEY,—

New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 6; Connecticut, New Jersey, Pennsylvania, Delaware, no — 4; Massachusetts, absent.

Mr. WILLIAMSON suggested, as better than an eventual

choice by the Senate, that this choice should be made by the Legislature, voting *by States* and not *per capita*.

Mr. SHERMAN suggested, "the House of Representatives," as preferable to "the Legislature;" and moved accordingly, to strike out the words, "The Senate shall immediately choose, &c.," and insert: "The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote."

Col. MASON liked the latter mode best, as lessening the aristocratic influence of the Senate.

On motion of Mr. SHERMAN,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 10 ; Delaware, no — 1.

Mr. GOUVERNEUR MORRIS suggested the idea of providing that, in all cases, the President in office should not be one of the five candidates ; but be only re-eligible in case a majority of the Electors should vote for him. [This was another expedient for rendering the President independent of the Legislative body for his continuance in office.]

Mr. MADISON remarked that as a majority of members would make a quorum in the House of Representatives, it would follow from the amendment of Mr. SHERMAN, giving the election to a majority of States, that the President might be elected by two States only, Virginia and Pennsylvania, which have eighteen members, if these States alone should be present.

On a motion, that the eventual election of President, in case of an equality of the votes of the Electors, be referred to the House of Representatives,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 7 ; New Jersey, Delaware, Maryland, no — 3.

Mr. KING moved to add to the amendment of Mr. SHERMAN, "But a quorum for this purpose shall consist of

a member or members from two-thirds of the States, and also a majority of the whole number of the House of Representatives."

Col. MASON liked it, as obviating the remark of Mr. MADISON.

The motion, as far as "States," inclusive, was agreed to. On the residue, to wit, "and also a majority of the whole number of the House of Representatives," it passed in the negative, —

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, aye — 5 ; New Hampshire, New Jersey, Delaware, Maryland, South Carolina, Georgia, no — 6.

The Report relating to the appointment of the Executive stands, as amended, as follows :

"He shall hold his office during the term of four years ; and, together with the Vice President, chosen for the same term, be elected in the following manner :

"Each State shall appoint, in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature.

"But no person shall be appointed an elector who is a member of the Legislature of the United States, or who holds any office of profit or trust under the United States.

"The electors shall meet in their respective States, and vote by ballot, for two persons, of whom one at least shall not be an inhabitant of the same State with themselves ; and they shall make a list of all the persons voted for, and of the number of votes of each ; which list they shall sign and certify, and transmit sealed to the seat of the General Government, directed to the President of the Senate.

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

"The person having the greatest number of votes shall be the President, if such number be a majority of the whole

number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; the representation from each State having one vote. But if no person have a majority, then from the five highest on the list the House of Representatives shall, in like manner, choose by ballot the President. In the choice of a President by the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States [* and the concurrence of a majority of all the States shall be necessary to such choice]. And in every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President.

“The Legislature may determine the time of choosing the electors, and of their giving their votes; and the manner of certifying and transmitting their votes; but the election shall be on the same day throughout the United States.”

Adjourned.

FRIDAY, SEPTEMBER 7TH.

In Convention,—The mode of constituting the Executive being resumed,—

Mr. RANDOLPH moved to insert, in the first section of the Report made yesterday, the following:

“The Legislature may declare by law what officer of the United States shall act as President, in case of the death, resignation or disability of the President and Vice President; and such officer shall act accordingly, until the time of electing a President shall arrive.”

*This clause was not inserted on this day, but on the seventh of September. See Page 678.

Mr. MADISON observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute, "until such disability be removed, or a President shall be elected."*

Mr. GOUVERNEUR MORRIS seconded the motion, which was agreed to.

It seemed to be an objection to the provision, with some that, according to the process established for choosing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to "*officers*" of the *United States*. They wished it to be at liberty to appoint others than such.

On the motion of Mr. RANDOLPH, as amended, it passed in the affirmative,—

New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, aye—6; Massachusetts, Connecticut, Delaware, North Carolina, no—4; New Hampshire, divided.

Mr. GERBY moved, "that in the election of President by the House of Representatives, no State shall vote by less than three members; and where that number may not be allowed to the State, it shall be made up by its Senators; and a concurrence of a majority of all the States shall be necessary to make such choice." Without some such provision, five individuals might possibly be competent to an election, these being a majority of two-thirds of the existing number of States; and two-thirds being a quorum for this business.

Mr. MADISON seconded the motion.

Mr. READ observed, that the States having but one member only in the House of Representatives would be in danger of having no vote at all in the election: the sickness or absence either of the Representatives, or one of the Senators, would have that effect.

*In the printed Journal this amendment is put into the original motion.

Mr. MADISON replied, that if one member of the House of Representatives should be left capable of voting for the State, the States having one Representative only would still be subject to that danger. He thought it an evil, that so small a number, at any rate, should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection, that the representatives of a *minority* of the people might reverse the choice of a *majority* of the States and of the *people*. He wished some cure for this inconvenience might yet be provided.

Mr. GERRY withdrew the first part of his motion; and on the question on the second part, viz: "and a concurrence of a majority of all the States shall be necessary to make such choice," to follow the words, "a member or members from two-thirds of the States," it was agreed to, *nem. con.*

The second Section (see the 4th of Sept., page 655,) requiring that the President should be a natural born citizen, &c., and have been a resident for fourteen years, and be thirty-five years of age, was agreed to, *nem. con.*

The third Section, "The Vice President shall be *ex-officio* President of the Senate," being then considered.

Mr. GERRY opposed this regulation. We might as well put the President himself at the head of the Legislature. The close intimacy that must subsist between the President and Vice President makes it absolutely improper. He was against having any Vice President.

Mr. GOUVERNEUR MORRIS. The Vice President then will be the first heir apparent that ever loved his father. If there should be no Vice President, the President of the Senate would be temporary successor, which would amount to the same thing.

Mr. SHERMAN saw no danger in the case. If the Vice President were not to be President of the Senate, he would be without employment; and some member, by being made President, must be deprived of his vote, unless when an

equal division of votes might happen in the Senate, which would be but seldom.

Mr. RANDOLPH concurred in the opposition to the clause.

Mr. WILLIAMSON observed, that such an officer as Vice President was not wanted. He was introduced merely for the sake of a valuable mode of election, which required two to be chosen at the same time.

Colonel MASON thought the office of Vice President an encroachment on the rights of the Senate; and that it mixed too much the Legislative and the Executive, which, as well as the Judiciary department, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever, of the power to make appointments, to either branch of the Legislature. On the other hand, he was averse to vest so dangerous a power in the President alone. As a method of avoiding both, he suggested that a Privy Council, of six members, to the President, should be established; to be chosen for six years by the Senate, two out of the Eastern, two out of the Middle, and two out of the Southern quarters of the Union; and to go out in rotation, two every second year; the concurrence of the Senate to be required only in the appointment of ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate, which he thought dangerous; as well as keep the departments separate and distinct. It would also save the expense of constant sessions of the Senate. He had, he said, always considered the Senate as too unwieldy and expensive for appointing officers, especially the smallest, such as tide-waiters, &c. He had not reduced his idea to writing, but it could be easily done, if it should be found acceptable.

On the question, shall the Vice President be *ex officio* President of the Senate?—

New Hampshire, Massachusetts, Connecticut, Pennsyl-

vania, Delaware, Virginia, South Carolina, Georgia, aye — 8; New Jersey, Maryland, no — 2; North Carolina, absent.

The other parts of the same Section were then agreed to.

The fourth section, to wit: "The President, by and with the advice and consent of the Senate, shall have power to make treaties," &c., was then taken up.

Mr. WILSON moved to add, after the word "Senate," the words, "and House of Representatives." As treaties, he said, are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this, he thought, so far as it was inconsistent with obtaining the legislative sanction, was outweighed by the necessity of the latter.

Mr. SHERMAN thought the only question that could be made was, whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature.

Mr. FITZSIMONS seconded the motion of Mr. WILSON; and on the question,—

Pennsylvania, aye — 1; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 10.

The first sentence, as to making treaties, was then agreed to, *nem. con.*

On the clause, "He shall nominate, &c. — appoint ambassadors," &c. —

Mr. WILSON objected to the mode of appointing, as blending a branch of the Legislature with the Executive. Good laws are of no effect, without a good Executive, and there can be no good Executive, without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the Council proposed by Colonel MASON; pro-

vided its advice should not be made obligatory on the President.

Mr. PINCKNEY was against joining the Senate in these appointments, except in the instances of ambassadors, who he thought ought not to be appointed by the President.

Mr. GOUVERNEUR MORRIS said, that as the President was to nominate, there would be responsibility; and as the Senate was to concur, there would be security. As Congress now make appointments, there is no responsibility.

Mr. GERBY. The idea of responsibility in the nomination to offices is chimerical. The President cannot know all characters, and can therefore always plead ignorance.

Mr. KING. As the idea of a Council, proposed by Col. MASON, has been supported by Mr. WILSON, he would remark, that most of the inconveniences charged on the Senate are incident to a Council of advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion, also, that the people would be alarmed at an unnecessary creation of new corps, which must increase the expense as well as influence of the Government.

On the question on these words in the clause, viz.: "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, and other public ministers and consuls, and Judges of the Supreme Court," it was agreed to, *nem. con.*, the insertion of "and consuls" having first taken place.

On the question on the following words: "and all other officers of the United States," —

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, aye — 9; Pennsylvania, South Carolina, no — 2.

On motion of Mr. SPAIGHT, that "the President shall have power to fill up all vacancies that may happen during

the recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate," it was agreed to, *nem. con.*

The fourth section. "The President by and with the advice and consent of the Senate shall have power to make treaties. *But no treaty shall be made without the consent of two-thirds of the members present,*" being considered and the last clause being before the House, —

Mr. WILSON thought it objectionable to require the concurrence of two-thirds, which puts it into the power of a minority to control the will of a majority.

Mr. KING concurred in the objection; remarking that as the Executive was here joined in the business, there was a check which did not exist in Congress, where the concurrence of two-thirds was required.

Mr. MADISON moved to insert, after the word "treaty," the words "except treaties of peace;" allowing these to be made with less difficulty than other treaties. It was agreed to, *nem. con.*

Mr. MADISON then moved to authorize a concurrence of two-thirds of the Senate to make treaties of peace, without the concurrence of the President. The President, he said, would necessarily derive so much power and importance from a state of war, that he might be tempted, if authorized, to impede a treaty of peace.

Mr. BUTLER seconded the motion.

Mr. GORHAM thought the security unnecessary, as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

Mr. GOUVERNEUR MORRIS thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general guardian of the national interests.

Mr. BUTLER was strenuous for the motion, as a necessary security against ambitious and corrupt Presidents. He mentioned the late perfidious policy of the Stadtholder in

Holland; and the artifices of the Duke of Marlborough to prolong the war of which he had the management.

Mr. GERRY was of opinion that in treaties of peace a greater rather than a less proportion of votes was necessary, than in other treaties. In treaties of peace the dearest interests will be at stake, as the fisheries, territories, &c. In treaties of peace also, there is more danger to the extremities of the continent, of being sacrificed, than on any other occasion.

Mr. WILLIAMSON thought that treaties of peace should be guarded at least by requiring the same concurrence as in other treaties.

On the motion of Mr. MADISON and Mr. BUTLER,—Maryland, South Carolina, Georgia, aye—3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no—8.

On the part of the clause concerning treaties, amended by the exception as to treaties of peace,—New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—8; New Jersey, Pennsylvania, Georgia, no—3.

The clause, “and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices,” being before the House,—

Col. MASON* said, that in rejecting a Council to the President, we were about to try an experiment on which the most despotic government had never ventured. The Grand Seignor himself had his Divan. He moved to postpone the consideration of the clause in order to take up the following:

“That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council as a Council of State for the President of the United States; to consist of six members, two of which

* In the printed Journal, Mr. Madison is erroneously substituted for Colonel Mason.

from the Eastern, two from the Middle, and two from the Southern States ; with a rotation and duration of office similar to those of the Senate ; such Council to be appointed by the Legislature or by the Senate."

Doctor FRANKLIN seconded the motion. We seemed, he said, too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience shewed that caprice, the intrigues of favorites and mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad Governors appointed in Great Britain for the Colonies. He thought a Council would not only be a check on a bad President, but be a relief to a good one.

Mr. GOUVERNEUR MORRIS. The question of a Council was considered in the Committee, where it was judged that the President, by persuading his Council to concur in his wrong measures, would acquire their protection for them.

Mr. WILSON approved of a Council, in preference to making the Senate a party to appointments.

Mr. DICKINSON was for a Council. It would be a singular thing, if the measures of the Executive were not to undergo some previous discussion before the President.

Mr. MADISON was in favor of the instruction to the Committee proposed by Col. MASON.

The motion of Col. MASON was negatived, —

Maryland, South Carolina, Georgia, aye — 3 ; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no — 8.

On the question of authorizing the President to call for the opinions of the Heads of Departments, in writing, it passed in the affirmative, New Hampshire only being, no.*

The clause was then unanimously agreed to.

Mr. WILLIAMSON and Mr. SPAIGHT moved, "that no treaty of peace affecting territorial rights should be made

* Not so stated in the printed Journal ; but conformable to the result afterwards appearing.

without the concurrence of two-thirds of the members of the Senate present."

Mr. KING. It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion to "all present rights of the United States."

Adjourned.

SATURDAY, SEPTEMBER 8TH.

In Convention,—The last Report of the Committee of Eleven (see the fourth of September) was resumed.

Mr. KING moved to strike out the exception of treaties of peace, from the general clause requiring two-thirds of the Senate for making treaties.

Mr. WILSON wished the requisition of two-thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by Mr. GORHAM, that we were not fit for one society.

A reconsideration of the whole clause was agreed to.

Mr. GOUVERNEUR MORRIS was against striking out the exception of treaties of peace. If two-thirds of the Senate should be required for peace, the Legislature will be unwilling to make war for that reason, on account of the fisheries, or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode of negating the supplies for the war.

Mr. WILLIAMSON remarked, that treaties are to be made in the branch of the Government where there may be a majority of the States, without a majority of the people. Eight men may be a majority of a quorum, and should not have the power to decide the conditions of peace. There would be no danger, that the exposed States, as South Carolina or Georgia, would urge an improper war for the Western territory.

Mr. WILSON. If two-thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

Mr. GERRY enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one-fifth of the people. The Senate will be corrupted by foreign influence.

Mr. SHERMAN was against leaving the rights established by the treaty of peace, to the Senate; and moved to annex a proviso, that no such rights should be ceded without the sanction of the Legislature.

Mr. GOUVERNEUR MORRIS seconded the ideas of Mr. SHERMAN.

Mr. MADISON observed that it had been too easy, in the present Congress, to make treaties, although nine States were required for the purpose.

On the question for striking out, "except treaties of peace,"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 8; New Jersey, Delaware, Maryland, no — 3.

Mr. WILSON and Mr. DAYTON moved to strike out the clause, requiring two-thirds of the Senate, for making treaties; on which, Delaware, aye — 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 9; Connecticut, divided.

Mr. RUTLEDGE and Mr. GERRY moved that "no treaty shall be made without the consent of two-thirds of all the members of the Senate"—according to the example in the present Congress.

Mr. GORHAM. There is a difference in the case, as the President's consent will also be necessary in the new Government.

On the question,—

North Carolina, South Carolina, Georgia, aye — 3;

New Hampshire, Massachusetts, (Mr. GERRY, aye,) Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no — 8.

Mr. SHERMAN moved that "no treaty shall be made without a majority of the whole number of the Senate"

Mr. GERRY seconded him.

Mr. WILLIAMSON. This will be less security than two-thirds, as now required.

Mr. SHERMAN. It will be less embarrassing.

On the question, it passed in the negative,—

Massachusetts, Connecticut, Delaware, South Carolina, Georgia, aye — 5; New Hampshire, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no — 6.

Mr. MADISON moved that a quorum of the Senate consist of two-thirds of all the members.

Mr. GOUVERNEUR MORRIS. This will put it in the power of one man to break up a quorum.

Mr. MADISON This may happen to any quorum.

On the question, it passed in the negative,—

Maryland, Virginia, North Carolina, South Carolina, Georgia, aye — 5; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, no — 6.

Mr. WILLIAMSON and Mr. GERRY moved "that no treaty should be made without previous notice to the members, and a reasonable time for their attending."

On the question,— all the States, no; except North Carolina, South Carolina, and Georgia, aye.

On a question on the clause of the Report of the Committee of Eleven, relating to treaties by two-thirds of the Senate — all the States were, aye; except Pennsylvania, New Jersey, and Georgia, no.

Mr. GERRY moved, that "no officer shall be appointed but to offices created by the Constitution or by law." This was rejected as unnecessary,—

Massachusetts, Connecticut New Jersey, North Carolina, Georgia, aye — 5; New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, no — 6.

The clause referring to the Senate the trial of impeachment against the President, for treason and bribery, was taken up.

Colonel MASON. Why is the provision restrained to, treason and bribery only? Treason, as defined in the Constitution, will not reach many great and dangerous offences. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason, as above defined. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachments. He moved to add, after "bribery," "or maladministration." Mr. GERRY seconded him.

Mr. MADISON. So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr. GOUVERNEUR MORRIS. It will not be put in force and can do no harm. An election of every four years, will prevent maladministration.

Col. MASON withdrew "maladministration;" and substituted, "other high crimes and misdemeanours against the State."

On the question, thus altered,—

New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina,* Georgia, aye — 8; New Jersey, Pennsylvania, Delaware, no — 3.

Mr. MADISON objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature; and for any act which might be called a misdemeanour. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments; or rather, a tribunal of which that should form a part.

Mr. GOUVERNEUR MORRIS thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the Executive on the Leg-

* In the printed Journal, South Carolina, no.

ialature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out.

Mr. PINCKNEY disapproved of making the Senate the court of impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine against him, and under the influence of heat and faction throw him out of office.

Mr. WILLIAMSON thought there was more danger of too much lenity, than of too much rigor, towards the President, considering the number of cases in which the Senate was associated with the President.

Mr. SHERMAN regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion by Mr. MADISON, to strike out the words, "by the Senate," after the word "conviction,"—

Pennsylvania, Virginia, aye—2; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, no—9.

In the amendment of Col. MASON just agreed to, the word "State," after the words, "misdemeanours against," was struck out; and the words, "United States," unani- mously inserted, in order to remove ambiguity.

On the question to agree to the clause, as amended, — New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10; Pennsylvania, no—1.

On motion, the following: "The Vice President and other civil officers of the United States, shall be removed from office on impeachment and conviction, as aforesaid," was added to the clause on the subject of impeachments.

The clause of the Report made on the fifth of September, and postponed, was taken up, to wit: "All bills for raising revenue shall originate in the House of Representa-

tives; and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the Treasury but in consequence of appropriations made by law."

It was moved to strike out the words, "and shall be subject to alterations and amendments by the Senate;" and insert the words used in the Constitution of Massachusetts on the same subject, viz: "but the Senate may propose or concur with amendments, as in other bills;" which was agreed to, *nem. con.*

On the question on the first part of the clause, "all bills for raising revenue shall originate in the House of Representatives," * —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye — 9; Delaware, Maryland, no — 2.

Mr. GOUVERNEUR MORRIS moved to add to the third clause of the Report made on the fourth of September, the words, "and every member shall be on oath;" which being agreed to, and a question taken on the clause, so amended, viz: "The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present; and every member shall be on oath,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye — 9; Pennsylvania, Virginia, no — 2.

Mr. GERRY repeated his motion above made, on this day, in the form following: "The Legislature shall have the sole right of establishing offices not heretofore provided for;" which was again negatived,—Massachusetts, Connecticut and Georgia, only, being aye.

Mr. McHENRY observed, that the President had not yet been any where authorized to convene the Senate, and moved to amend Article 10, Section 2, by striking out the words, "He may convene them [the Legislature] on extraor-

* This was a conciliatory vote, the effect of the compromise formerly alluded to. See note, page 666.

dinary occasions;" and inserting, "He may convene both, or either of the Houses, on extraordinary occasions." This, he added, would also provide for the case of the Senate being in session, at the time of convening the Legislature.

Mr. WILSON said, he should vote against the motion, because it implied that the Senate might be in session when the Legislature was not, which he thought improper.

On the question,—New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, aye — 7; Massachusetts, Pennsylvania, Virginia, South Carolina, no — 4.

A committee was then appointed by ballot, to revise the style of, and arrange, the articles which have been agreed to by the House. The Committee consisted of Mr. JOHNSON, Mr. HAMILTON, Mr. GOUVERNEUR MORRIS, Mr. MADISON, and Mr. KING.

Mr. WILLIAMSON moved, that, previous to this work of the Committee, the clause relating to the number of the House of Representatives should be reconsidered, for the purpose of increasing the number.

Mr. MADISON seconded the motion.

Mr. SHERMAN opposed it. He thought the provision on that subject amply sufficient.

Col. HAMILTON expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous government, but would declare, at the same time, he held it essential that the popular branch of it should be on a broad foundation. He was seriously of opinion, that the House of Representatives was on so narrow a scale, as to be really dangerous, and to warrant a jealousy in the people, for their liberties. He remarked, that the connection between the President and Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the Legislature should be established.

On the motion of Mr. WILLIAMSON to reconsider, it was negatived,*—

Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye — 5; New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, no — 6.

Adjourned.

MONDAY, SEPTEMBER 10TH.

In Convention,— Mr. GERRY moved to reconsider Article 19, viz: “On the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose,” (see the sixth of August,—page 461.)

This Constitution, he said, is to be paramount to the State Constitutions. It follows, hence, from this article, that two-thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the State Constitutions altogether. He asked whether this was a situation proper to be run into.

Mr. HAMILTON seconded the motion; but, he said, with a different view from Mr. GERRY. He did not object to the consequences stated by Mr. GERRY. There was no greater evil in subjecting the people of the United States to the major voice, than the people of a particular State. It had been wished by many, and was much to have been desired, that an easier mode of introducing amendments had been provided by the Articles of the Confederation. It was equally desirable now, that an easy mode should be established for supplying defects which will probably appear in the new system. The mode proposed was not adequate. The State Legislatures will not apply for alterations; but with a view to increase their own powers. The National Legislature will be the first to perceive, and will be most sensible to, the necessity of amendments; and ought also to be empow-

* This motion and vote are entered on the printed Journal of the ensuing morning.

ered, whenever two-thirds of each branch should concur, to call a Convention. There could be no danger in giving this power, as the people would finally decide in the case.

Mr. MADISON remarked on the vagueness of the terms, "call a Convention for the purpose," as sufficient reason for reconsidering the article. How was a Convention to be formed?—by what rule decide?—what the force of its acts?

On the motion of Mr. GERRY to reconsider,—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; New Jersey, no—1; New Hampshire, divided.

Mr. SHERMAN moved to add to the article: "or the Legislature may propose amendments to the several States for their approbation; but no amendments shall be binding until consented to by the several States."

Mr. GERRY seconded the motion.

Mr. WILSON moved to insert, "two-thirds of," before the words, "several States;" on which amendment to the motion of Mr. SHERMAN,—

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, aye—5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no—6.

Mr. WILSON then moved to insert, "three-fourths of," before "the several States;" which was agreed to, *nem. con.*

Mr. MADISON moved to postpone the consideration of the amended proposition, in order to take up the following

"The Legislature of the United States, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths, at least, of the Legislatures of the several States, or by conventions in three-fourths thereof, as one or the

other mode of ratification may be proposed by the Legislature of the United States.”

Mr. HAMILTON seconded the motion.

Mr. RUTLEDGE said he never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition: * “provided that no amendments, which may be made prior to the year 1808 shall in any manner affect the fourth and fifth sections of the seventh article.” The postponement being agreed to,—

On the question on the proposition of Mr. MADISON and Mr. HAMILTON, as amended,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Delaware, no—1; New Hampshire, divided.

Mr. GERRY moved to reconsider Articles 21 and 22; from the latter of which “for the approbation of Congress,” had been struck out. He objected to proceeding to change the Government without the approbation of Congress, as being improper, and giving just umbrage to that body. He repeated his objections, also, to an annulment of the confederation with so little scruple or formality.

Mr. HAMILTON concurred with Mr. GERRY as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong, also, to allow nine States as provided by Article 21, to institute a new Government on the ruins of the existing one. He would propose, as a better modification of the two Articles (21 and 22) that the plan should be sent to Congress, in order that the same, if approved by them, may be communicated to the State

* The printed Journal, makes the succeeding proviso as to the fourth and fifth sections of the seventh article, moved by Mr. Rutledge, part of the proposition of Mr. Madison.

Legislatures, to the end that they may refer it to State Conventions; each Legislature declaring, that, if the convention of the State should think the plan ought to take effect among nine ratifying States, the same should take effect accordingly.

Mr. GORHAM. Some States will say that nine States shall be sufficient to establish the plan; others will require unanimity for the purpose, and the different and conditional ratifications will defeat the plan altogether.

Mr. HAMILTON. No convention convinced of the necessity of the plan will refuse to give it effect, on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article: while it would attain the same end.

Mr. FITZSIMONS remarked, that the words, "for their approbation," had been struck out in order to save Congress from the necessity of an act inconsistent with the Articles of Confederation under which they held their authority.

Mr. RANDOLPH declared, if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning, he said, been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions, as the basis and outline of a reform. These republican propositions had, however, much to his regret, been widely, and, in his opinion, irreconcilably, departed from. In this state of things, it was his idea, and he accordingly meant to propose, that the State conventions should be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt would give quiet to his own mind.

Mr. WILSON was against a reconsideration for any of the purposes which had been mentioned.

Mr. KING thought it would be more respectful to Con-

gress, to submit the plan generally to them; than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr. GERRY urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the Articles of Confederation. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

Mr. SHERMAN was in favor of Mr. KING's idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient; but that it would be better to make it a separate act, and in some such form as that intimated by Col. HAMILTON, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, 21 and 22,—

Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, aye — 7; Massachusetts, Pennsylvania, South Carolina, no — 3; New Hampshire, divided.

Mr. HAMILTON then moved to postpone Article 21, in order to take up the following, containing the ideas he had above expressed, viz:

“Resolved, that the foregoing plan of a Constitution be transmitted to the United States in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the Legislature of the several States, to the end that they may provide for its final ratification, by referring the same to the consideration of a Convention of Deputies in each State, to be chosen by the people thereof; and that it be recommended to the said Legislatures, in their respective acts for organizing such Convention, to declare, that if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State; and further, that if the said Convention

shall be of opinion that the same, upon the assent of any nine States thereto, ought to take effect between the States so assenting, such opinion shall thereupon be also binding upon such a State, and the said Constitution shall take effect between the States assenting thereto."

Mr. GERBY seconded the motion.

Mr. WILSON. This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention, on the approbation of Congress. He declared it to be worse than folly, to rely on the concurrence of the Rhode Island members of Congress in the plan. Maryland had voted, on this floor, for requiring the unanimous assent of the thirteen States to the proposed change in the Federal system. New York has not been represented for a long time past in the Convention. Many individual deputies from other States, have spoken much against the plan. Under these circumstances can it be safe to make the assent of Congress necessary? After spending four or five months in the laborious and arduous task of forming a Government for our country, we are ourselves, at the close, throwing insuperable obstacles in the way of its success.

Mr. CLYMER thought that the mode proposed by Mr. HAMILTON would fetter and embarrass Congress as much as the original one, since it equally involved a breach of the Articles of Confederation.

Mr. KING concurred with Mr. CLYMER. If Congress can accede to one mode they can to the other. If the approbation of Congress be made necessary, and they should not approve, the State Legislatures will not propose the plan to Conventions; or if the States themselves are to provide that nine States shall suffice to establish the system, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

Mr. RUTLEDGE viewed the matter in the same light with Mr. KING.

On the question to postpone, in order to take up Colonel HAMILTON'S motion,—

Connecticut, aye — 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 10.

A question being then taken on the Article 21, it was agreed to unanimously.

Colonel HAMILTON withdrew the remainder of the motion to postpone Article 22; observing that his purpose was defeated by the vote just given.

Mr. WILLIAMSON and Mr. GERRY moved to reinstate the words, "for the approbation of Congress," in Article 22; which was disagreed to, *nem. con.*

Mr. RANDOLPH took this opportunity to state his objections to the system. They turned on the Senate's being made the court of impeachment for trying the Executive — on the necessity of three-fourths instead of two-thirds of each House to overrule the negative of the President — on the smallness of the number of the Representative branch — on the want of limitation to a standing army — on the general clause concerning necessary and proper laws — on the want of some particular restraint on navigation acts — on the power to lay duties on exports — on the authority of the General Legislature to interpose on the application of the *Executives* of the States — on the want of a more definite boundary between the General and State Legislatures — and between the General and State Judiciaries — on the unqualified power of the President to pardon treasons — on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course, he asked, was he to pursue? Was he to promote the establishment of a plan, which he verily believed would end in tyranny? He was unwilling, he said, to impede the wishes and judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment.

The only mode in which his embarrassment could be removed was that of submitting the plan to Congress, to go from them to the State Legislatures, and from these to State Conventions, having power to adopt, reject, or amend; the process to close with another General Convention, with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government. He accordingly proposed a resolution to this effect.

Doctor FRANKLIN seconded the motion.

Colonel MASON urged, and obtained that the motion should lie on the table for a day or two, to see what steps might be taken with regard to the parts of the system objected to by Mr. RANDOLPH.

Mr. PINCKNEY moved, "that it be an instruction to the Committee for revising the style and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid, with the same, before the United States in Congress."

* The motion itself was referred to the Committee, *nem. con.*

* Mr. RANDOLPH moved to refer to the Committee, also, a motion relating to pardons in cases of treason; which was agreed to, *nem. con.*

Adjourned.

TUESDAY, SEPTEMBER 11TH.

In Convention,—The Report of the Committee of style and arrangement not being made, and being waited for,
The House adjourned.

WEDNESDAY, SEPTEMBER 12TH.

In Convention,—Doct. JOHNSON, from the Committee of style, &c., reported a digest of the plan, of which printed

*These motions are not entered in the printed Journal.

copies were ordered to be furnished to the members. He also reported a letter to accompany the plan to Congress.

REPORT.*

We the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America:

ARTICLE I.

Sect. 1. All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. The House of Representatives shall be composed of members chosen every second year, by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten

*This is a literal copy of the printed Report. The copy in the printed Journals contains some of the alterations subsequently made in the House.

years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every forty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

When the vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided [by lot*], as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

* The words, "by lot," were not in the Report as printed; but were inserted in manuscript as a typographical error, departing from the text of Report referred to the Committee of style and arrangement.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to the law.

Sect. 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations.

The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each House shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and

from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the Yeas and Nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Sect. 7. The enacting style of the laws shall be, "Be it enacted by the Senators and Representatives in Congress assembled."

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their

Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House; by which it shall likewise be reconsidered; and if approved by two-thirds of that House, it shall become law. But in all such cases the votes of both Houses shall be determined by Yeas and Nays, and the name of the persons voting for and against the bill, shall be entered on the Journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by three-fourths* of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress may by joint ballot appoint a Treasurer. They shall have power —

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several States, and with the Indian tribes.

To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

* In the entry of this Report in the printed Journal "two thirds" are substituted for "three-fourths." This change was made after the Report was received.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and [punish]* offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriations of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all

*Punish, a typographical omission in the printed Report.

other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of Habeas Corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder shall be passed, nor any *ex post facto* law.

No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever from any king, prince, or foreign State.

Sect. 10. No State shall coin money, or emit bills of credit, or make any thing but gold or silver coin a tender in payment of debts, or pass any bills of attainder, or *ex post facto* laws, or laws altering or impairing the obligation of contracts; or grant letters of marque and reprisal, or enter into any treaty, alliance or confederation, or grant any title of nobility.

No State shall, without the consent of Congress, lay imposts or duties on imports or exports; or with such consent, but to the use of the Treasury of the United States; or keep troops or ships of war in time of peace; or enter into any agreement or compact with another State, or with

any foreign power; or engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted.

ARTICLE II.

Sect. 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected in the following manner:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative shall be appointed an Elector, nor any person holding an office of trust or profit under the United States.

The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the General Government, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, and not *per capita*, the representation from each State having one vote.

A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President by the Representatives, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

The Congress may determine the time of choosing the Electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President; declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or the period for choosing another President arrive.

The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I, _____, do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my judgment and power, preserve, protect and defend the Constitution of the United States."

Sect. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices. And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur ; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sect. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sect. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours.

ARTICLE III.

Sect. 1. The Judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 2. The Judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more States; between a State, and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their

enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

ARTICLE IV.

Sect. 1. Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, and removed to the State having jurisdiction of the crime.

No person legally held to service or labor in one State, escaping to another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Sect. 3. New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States; without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or

other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Sect. 4. The United States shall guarantee to every State in this Union a republican form of government; and shall protect each of them against invasion; and, on application of the Legislature or Executive, against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose amendments to this Constitution; which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the ——— and ——— sections of the ——— article.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives beforementioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and

of the several States, shall be bound by oath, or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

LETTER.

“ We have now the honor to submit to the consideration of the United States, in Congress assembled, that Constitution which has appeared to us the most advisable.

“ The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Thence results the necessity of a different organization. It is obviously impracticable, in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved. And on the present occasion this difficulty was increased by a difference among the several States, as to their situation, extent, habits, and particular interests.

“ In all our deliberations on this subject, we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our

union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid in points of inferior magnitude, than might have been otherwise expected. And thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

“That it will meet the full and entire approbation of every State is not, perhaps, to be expected. But each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others. That it is liable to a few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all; and secure her freedom and happiness, is our most ardent wish.”

Mr. WILLIAMSON moved to reconsider the clause requiring three-fourths of each house to overrule the negative of the President, in order to strike out three-fourths and insert two-thirds. He had, he remarked, himself proposed three-fourths instead of two-thirds; but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

Mr. SHERMAN was of the same opinion; adding that the States would not like to see so small a minority, and the President, prevailing over the general voice. In making laws, regard should be had to the sense of the people, who are to be bound by them; and it was more probable that a single man should mistake or betray this sense, than the Legislature.

Mr. GOUVERNEUR MORRIS. Considering the difference between the two proportions numerically, it amounts, in one House, to two members only; and in the other, to not more than five; according to the numbers of which the Legislature is at first to be composed. It is the interest,

moreover, of the distant States, to prefer three-fourths, as they will be oftenest absent, and need the interposing check of the President. The excess, rather than the deficiency, of laws was to be dreaded. The example of New York shows that two-thirds is not sufficient to answer the purpose.

Mr. HAMILTON added his testimony to the fact, that two-thirds in New York had been ineffectual, either where a popular object, or a legislative faction, operated; of which he mentioned some instances.

Mr. GERRY. It is necessary to consider the danger on the other side also. Two-thirds will be a considerable, perhaps, a proper, security. Three-fourths puts too much in the power of a few men. The primary object of the revisionary check of the President is, not to protect the general interest, but to defend his own department. If three-fourths be required a few Senators, having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the Vice President Speaker increases the danger.

Mr. WILLIAMSON was less afraid of too few than of too many laws. He was, most of all, afraid that the repeal of bad laws might be rendered too difficult by requiring three-fourths to overcome the dissent of the President.

Colonel MASON had always considered this as one of the most exceptionable parts of the system. As to the numerical argument of Mr. GOUVERNEUR MORRIS, little arithmetic was necessary to understand that three-fourths was more than two-thirds, whatever the numbers of the Legislature might be. The example of New York depended on the real merits of the laws. The gentlemen citing it had no doubt given their own opinions. But perhaps there were others of opposite opinions, who could equally paint the abuses on the other side. His leading view was, to guard against too great an impediment to the repeal of laws.

Mr. GOUVERNEUR MORRIS dwelt on the danger to the public interest from the instability of laws, as the most to be

guarded against. On the other side, there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The inspection laws of Virginia and Maryland, to which all are now so much attached, were unpopular at first.

Mr. PINCKNEY was warmly in opposition to three-fourths, as putting a dangerous power in the hands of a few Senators headed by the President.

Mr. MADISON. When three-fourths was agreed to, the President was to be elected by the Legislature, and for seven years. He is now to be elected by the people, and for four years. The object of the revisionary power is twofold, — first, to defend the Executive rights; secondly, to prevent popular or factious injustice. It was an important principle in this and in the State Constitutions, to check legislative injustice and encroachments. The experience of the States had demonstrated that their checks are insufficient. We must compare the danger from the weakness of two-thirds, with the danger from the strength of three-fourths. He thought on the whole, the former was the greater. As to the difficulty of repeals, it was probable that in doubtful cases, the policy would soon take place, of limiting the duration of laws, so as to require renewal instead of repeal.

The reconsideration being agreed to, —

On the question to insert two-thirds in place of three-fourths, —

Connecticut, New Jersey, Maryland, (Mr. McHENRY, no,) North Carolina, South Carolina, Georgia, aye — 6; Massachusetts, Pennsylvania, Delaware, Virginia, (General WASHINGTON, Mr. BLAIB, Mr. MADISON, no; Colonel MASON, Mr. RANDOLPH, aye,) no — 4; New Hampshire, divided.

Mr. WILLIAMSON observed to the House, that no provi-

sion was yet made for juries in civil cases, and suggested the necessity of it.

Mr. GORHAM. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr. GERRY urged the necessity of juries to guard against corrupt judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by juries.

Colonel MASON perceived the difficulty mentioned by Mr. GORHAM. The jury cases cannot be specified. A general principle laid down, on this and some other points, would be sufficient. He wished the plan had been prefaced with a Bill of Rights, and would second a motion if made for the purpose. It would give great quiet to the people; and with the aid of the State Declarations, a bill might be prepared in a few hours.

Mr. GERRY concurred in the idea, and moved for a Committee to prepare a Bill of Rights.

Colonel MASON seconded the motion.

Mr. SHERMAN was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper, which cannot be discriminated. The Legislature may be safely trusted.

Colonel MASON. The laws of the United States are to be paramount to State Bills of Rights.

On the question for a Committee to prepare a Bill of Rights,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, aye — 5; Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 5; Massachusetts, absent.

The clause relating to exports being reconsidered, at the instance of Colonel MASON,—who urged that the re-

restrictions on the States would prevent the incidental duties necessary for the inspection and safe keeping of their produce, and be ruinous to the staple States, as he called the five Southern States,— he moved as follows: “provided, nothing herein contained shall be construed to restrain any State from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses in keeping the commodities in the care of public officers, before exportation.” In answer to a remark which he anticipated, to wit, that the States could provide for these expenses, by a tax in some other way, he stated the inconvenience of requiring the planters to pay a tax before the actual delivery for exportation.

Mr. MADISON seconded the motion. It would at least be harmless; and might have the good effect of restraining the States to *bona fide* duties for the purpose, as well as of authorizing explicitly such duties; though perhaps the best guard against an abuse of the power of the States on this subject was the right in the General Government to regulate trade between State and State.

Mr. GOUVERNEUR MORRIS saw no objection to the motion. He did not consider the dollar per hogshead laid on tobacco in Virginia, as a duty on exportation, as no drawback would be allowed on tobacco taken out of the warehouse for internal consumption.

Mr. DAYTON was afraid the proviso would enable Pennsylvania to tax New Jersey under the idea of inspection duties of which Pennsylvania would judge.

Mr. GORHAM and Mr. LANGDON thought there would be no security, if the proviso should be agreed to, for the States exporting through other States, against these oppressions of the latter. How was redress to be obtained, in case duties should be laid beyond the purpose expressed?

Mr. MADISON. There will be the same security as in other cases. The jurisdiction of the Supreme Court must be the source of redress. So far only had provision been made by the plan against injurious acts of the States. His

own opinion was, that this was insufficient. A negative on the State laws alone could meet all the shapes which these could assume. But this had been overruled.

Mr. FITZSIMONS. Incidental duties on tobacco and flour never have been, and never can be, considered as duties on exports.

Mr. DICKINSON. Nothing will save the States in the situation of New Hampshire, New Jersey, Delaware, &c., from being oppressed by their neighbours, but requiring the assent of Congress to inspection duties. He moved that this assent should accordingly be required.

Mr. BUTLER seconded the motion.

Adjourned.

THURSDAY, SEPTEMBER 13TH.

In Convention,—Col. MASON. He had moved without success for a power to make sumptuary regulations. He had not yet lost sight of his object. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, and the necessity of restricting it, as well with economical as republican views, he moved that a committee be appointed to report articles of association for encouraging, by the advice, the influence, and the example, of the members of the Convention, economy, frugality, and American manufactures.

Doctor JOHNSON seconded the motion; which was, without debate, agreed to, *nem. con.*; and a committee appointed, consisting of Colonel MASON, Doctor FRANKLIN, Mr. DICKINSON, Doctor JOHNSON and Mr. LIVINGSTON.*

Col. MASON renewed his proposition of yesterday on the subject of inspection laws, with an additional clause giving to Congress a control over them in case of abuse,—as follows:

“ Provided, that no State shall be restrained from im-

* This motion, and appointment of the committee, do not appear in the printed Journal. No report was made by the Committee.

posing the usual duties on produce exported from such State, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers; but all such regulations shall, in case of abuse, be subject to the revision and control of Congress."

There was no debate, and on the question,—

New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, Georgia, aye — 7 ; Pennsylvania, Delaware, South Carolina, no — 3.

The report from the Committee of style and arrangement was taken up, in order to be compared with the articles of the plan, as agreed to by the House, and referred to the committee, and to receive the final corrections and sanction of the Convention.

Article 1, Section 2. On motion of Mr. RANDOLPH, the word "servitude" was struck out, and "service" unani- mously * inserted, the former being thought to express the condition of slaves, and the latter the obligations of free persons.

Mr. DICKINSON and Mr. WILSON moved to strike out, "and direct taxes," from Article 1, Section 2, as improperly placed in a clause relating merely to the constitution of the House of Representatives.

Mr. GOUVERNEUR MORRIS. The insertion here was in consequence of what had passed on this point ; in order to exclude the appearance of counting the negroes in the *representation*. The including of them may now be referred to the object of direct taxes, and incidentally only to that of representation.

On the motion to strike out, "and direct taxes," from this place,—

New Jersey, Delaware, Maryland, aye — 3 ; New Hamp- shire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no — 8.

* See page 372 of the printed Journal.

Article 1, Section 7 — “if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him,” &c.

Mr. MADISON moved to insert, between “after,” and “it,” in Article 1, Section 7, the words, “the day on which,” in order to prevent a question whether the day on which the bill be presented ought to be counted, or not, as one of the ten days.

Mr. RANDOLPH seconded the motion.

Mr. GOUVERNEUR MORRIS. The amendment is unnecessary. The law knows no fractions of days.

A number of members being very impatient, and calling for the question,—

Pennsylvania, Maryland, Virginia, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no — 8.

Doctor JOHNSON made a further report from the Committee of Style, &c., of the following resolutions to be substituted for Articles 22 and 23.

“Resolved, that the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.”

“Resolved, that it is the opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which Electors should be appointed by the States which shall have ratified the same; and a day on which the Electors should assemble to vote for the President; and the time and place for commencing proceedings under this Constitution: That after such publication the Electors should be appointed, and the Senators

and Representatives elected: That the Electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled: That the Senators and Representatives should convene at the time and place assigned: that the Senators should appoint a President for the sole purpose of receiving, opening and counting the votes for President, and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

Adjourned.

FRIDAY, SEPTEMBER 14TH.

In Convention, — The Report of the Committee of style and arrangement being resumed, —

Mr. WILLIAMSON moved to reconsider, in order to increase the number of Representatives fixed for the first Legislature. His purpose was to make an addition of one-half generally to the number allotted to the respective States; and to allow two to the smallest States.

On this motion, — Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye — 5; New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, no — 6.

Article 1, Section 3, the words “by lot,” * were struck out, *nem. con.*, on motion of Mr. MADISON, that some rule might prevail in the rotation that would prevent both the members from the same State, from going out at the same time.

“*Ex officio*,” struck out of the same section as superfluous, *nem. con.*; and, “or affirmation,” after “oath,” inserted, — also unanimously.

Mr. RUTLEDGE and Mr. GOUVERNEUR MORRIS moved,

* “By lot,” had been reinstated from the Report of the Committee of five made on the sixth of August, as a correction of the printed Report by the Committee of style, &c. See pages 451, and 701.

“that persons impeached be suspended from their offices, until they be tried and acquitted.”

Mr. MADISON. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

Mr. KING concurred in the opposition to the amendment.

On the question to agree to it, —

Connecticut, South Carolina, Georgia, aye — 3; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no — 8.

Article 1, Section 4, “except as to the places of choosing Senators,” was added, *nem. con.* to the end of the first clause, in order to exempt the seats of government in the States from the power of Congress.

Article 1, Section 5. “Each House shall keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may in their judgment require secrecy.”

Col. MASON and Mr. GERRY moved to insert, after the word “parts,” the words, “of the proceedings of the Senate,” so as to require publication of all the proceedings of the House of Representatives.

It was intimated, on the other side, that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war, in which the House of Representatives was to concur, were instanced.

On the question, it passed in the negative, —

Pennsylvania, Maryland, North Carolina, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia, no — 7; South Carolina, divided.

Mr. BALDWIN observed, that the clause, Article 1, Sec-

tion 6, declaring that no member of Congress, "during the time for which he was elected, shall be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time," would not extend to offices *created by the Constitution*; and the salaries of which would be created, *not increased*, by Congress at their first session. The members of the first Congress consequently might evade the disqualification in this instance. He was neither seconded nor opposed, nor did any thing further pass on the subject.

Article 1, Sect. 8. The Congress "may by joint ballot appoint a Treasurer,"—

Mr. RUTLEDGE moved to strike out this power, and let the Treasurer be appointed in the same manner with other officers.

Mr. GORHAM and Mr. KING said that the motion, if agreed to, would have a mischievous tendency. The people are accustomed and attached to that mode of appointing Treasurers, and the innovation will multiply objections to the system.

Mr. GOUVERNEUR MORRIS remarked that if the Treasurer be not appointed by the Legislature, he will be more narrowly watched, and more readily impeached.

Mr. SHERMAN. As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint, but several votes.

General PINCKNEY. The Treasurer is appointed by joint ballot in South Carolina. The consequence is, that bad appointments are made, and the Legislature will not listen to the faults of their own officer.

On the motion to strike out, —

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye -- 8; Massachusetts, Pennsylvania, Virginia, no -- 3.

Article 1, Sect. 8, — the words "but all such duties,

imposts and excises, shall be uniform throughout the United States," were unanimously annexed to the power of taxation.

On the clause, "to define and punish piracies and felonies on the high seas, and punish offences against the law of nations,"—

Mr. GOUVERNEUR MORRIS moved to strike out "punish," before the words, "offences against the law of nations," so as to let these be *definable*, as well as punishable, by virtue of the preceding member of the sentence.

Mr. WILSON hoped the alteration would by no means be made. To pretend to *define* the law of nations, which depended on the authority of all the civilized nations of the world, would have a look of arrogance, that would make us ridiculous.

Mr. GOUVERNEUR MORRIS. The word *define* is proper when applied to *offences* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word "punish," it passed in the affirmative, —

New Hampshire, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, aye — 6; Massachusetts, Pennsylvania, Maryland, Virginia, Georgia, no — 5.

Doctor FRANKLIN * moved to add, after the words, "post roads," Article 1, Sect. 8, a power "to provide for cutting canals where deemed necessary."

Mr. WILSON seconded the motion.

Mr. SHERMAN objected. The expense in such cases will fall on the United States, and the benefit accrue to the places where the canals may be cut.

Mr. WILSON. Instead of being an expense to the United States, they may be made a source of revenue.

Mr. MADISON suggested an enlargement of the motion, into a power "to grant charters of incorporation where the interest of the United States might require, and the legis-

* This motion by Doctor FRANKLIN not stated in the printed Journal, as are some other motions.

lative provisions of individual States may be incompetent." His primary object was, however, to secure an easy communication between the States, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow.

Mr. RANDOLPH seconded the proposition.

Mr. KING thought the power unnecessary.

Mr. WILSON. It is necessary to prevent a *State* from obstructing the *general* welfare.

Mr. KING. The States will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank, which has been a subject of contention in those cities. In other places it will be referred to mercantile monopolies.

Mr. WILSON mentioned the importance of facilitating by canals the communication with the Western settlements. As to banks, he did not think with Mr. KING, that the power in that point of view would excite the prejudices and parties apprehended. As to mercantile monopolies, they are already included in the power to regulate trade.

Col. MASON was for limiting the power to the single case of canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution, as supposed by Mr. WILSON

The motion being so modified as to admit a distinct question specifying and limited to the case of canals,—

Pennsylvania, Virginia, Georgia, aye — 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, no — 8.

The other part fell of course, as including the power rejected.

Mr. MADISON and Mr. PINCKNEY then moved to insert, in the list of powers vested in Congress, a power "to establish an University, in which no preferences or distinctions should be allowed on account of religion."

Mr. WILSON supported the motion.

Mr. GOUVERNEUR MORRIS. It is not necessary. The exclusive power at the seat of government, will reach the object.

On the question,—

Pennsylvania, Virginia, North Carolina, South Carolina, aye—4; New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, Georgia, no—6; Connecticut, divided, (Doctor JOHNSON, aye; Mr. SHERMAN, no.)

Colonel MASON, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the danger of them, moved to preface the clause (Article 1, Sect. 8), “to provide for organizing, arming and disciplining the militia,” &c., with the words, “and that the liberties of the people may be better secured against the danger of standing armies in time of peace.”

Mr. RANDOLPH seconded the motion.

Mr. MADISON was in favor of it. It did not restrain Congress from establishing a military force in time of peace, if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Government on that head.

Mr. GOUVERNEUR MORRIS opposed the motion, as setting a dishonorable mark of distinction on the military class of citizens.

Mr. PINCKNEY and Mr. BEDFORD concurred in the opposition.

On the question,—

Virginia, Georgia, aye—2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no—9.

Colonel MASON moved to strike out from the clause (Article 1, Sect. 9,) “no bill of attainder, nor any *ex post facto* law, shall be passed,” the words, “nor any *ex post facto* law.” He thought it not sufficiently clear that the

prohibition meant by this phrase was limited to cases of a criminal nature; and no Legislature ever did or can altogether avoid them in civil cases.

Mr. GERRY seconded the motion; but with a view to extend the prohibition to "civil cases," which he thought ought to be done.

On the question, all the States were no.

Mr. PINCKNEY and Mr. GERRY moved to insert a declaration, "that the liberty of the press should be inviolably observed."

Mr. SHERMAN. It is unnecessary. The power of Congress does not extend to the press.

On the question, it passed in the negative,—

Massachusetts, Maryland, Virginia, South Carolina, aye — 4; New Hampshire,* Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no — 7.

Article 1, Section 9. "No capitation tax shall be laid, unless," &c.

Mr. READ moved to insert after "capitation," the words, "or other direct tax." He was afraid that some liberty might otherwise be taken to saddle the States with a readjustment, by this rule, of past requisitions of Congress; and that his amendment, by giving another cast to the meaning, would take away the pretext.

Mr. WILLIAMSON seconded the motion, which was agreed to.

On motion of Col. MASON, the words "or enumeration," were inserted after, as explanatory of "census,"— Connecticut and South Carolina, only, no.

At the end of the clause, "no tax or duty shall be laid on articles exported from any State," was added the following amendment, conformably to a vote on the 31st of August, (p. 647,) viz: "no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties, in another."

* In the printed Journal, New Hampshire, aye.

Col. MASON moved a clause requiring, "that an account of the public expenditures should be annually published."

Mr. GERRY seconded the motion.

Mr. GOUVERNEUR MORRIS urged that this would be impossible, in many cases.

Mr. KING remarked, that the term expenditures went to every minute shilling. This would be impracticable. Congress might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

Mr. MADISON proposed to strike out "annually" from the motion, and insert "from time to time," which would enjoin the duty of frequent publications, and leave enough to the discretion of the Legislature. Require too much and the difficulty will beget a habit of doing nothing. The articles of Confederation require half yearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

Mr. WILSON seconded and supported the motion. Many operations of finance cannot be properly published at certain times.

Mr. PINCKNEY was in favor of the motion.

Mr. FITZSIMONS. It is absolutely impossible to publish expenditures in the full extent of the term.

Mr. SHERMAN thought "from time to time," the best rule to be given. "Annually" was struck out, and those words inserted, *nem. con.*

The motion of Col. MASON, so amended, was then agreed to, *nem. con.*, and added after "appropriations by law," as follows: "and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The first clause of Article 1, Sect. 10, was altered so as to read, "no State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of

attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.”

Mr. GERRY entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts; alleging that Congress ought to be laid under the like prohibitions. He made a motion to that effect. He was not seconded.

Adjourned.

SATURDAY, SEPTEMBER 15TH.

In Convention,—Mr. CARROLL reminded the House that no address to the people had yet been prepared. He considered it of great importance that such an one should accompany the Constitution. The people had been accustomed to such, on great occasions, and would expect it on this. He moved that a committee be appointed for the special purpose of preparing an address.

Mr. RUTLEDGE objected, on account of the delay it would produce, and the impropriety of addressing the people before it was known whether Congress would approve and support the plan. Congress, if an address be thought proper, can prepare as good a one. The members of the Convention can, also, explain the reasons of what has been done to their respective constituents.

Mr. SHERMAN concurred in the opinion that an address was both unnecessary and improper.

On the motion of Mr. CARROLL,—

Pennsylvania, Delaware, Maryland, Virginia, aye—4; New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina,* Georgia, no—6; North Carolina,* absent.

Mr. LANGDON. Some gentlemen have been very uneasy that no increase of the number of Representatives has been admitted. It has in particular been thought, that one more ought to be allowed to North Carolina. He was

* In the printed Journal, North Carolina, no; South Carolina, omitted.

of opinion that an additional one was due both to that State, and to Rhode Island; and moved to reconsider for that purpose.

Mr. SHERMAN. When the Committee of eleven reported the appointments, five Representatives were thought the proper share of North Carolina. Subsequent information, however, seemed to entitle that State to another.

On the motion to reconsider,—

New Hampshire, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Massachusetts, New Jersey, no—2; Pennsylvania, divided.

Mr. LANGDON moved to add one member to each of the representations of North Carolina and Rhode Island.

Mr. KING was against any change whatever, as opening the door for delays. There had been no official proof that the numbers of North Carolina are greater than before estimated, and he never could sign the Constitution, if Rhode Island is to be allowed two members, that is, one-fourth of the number allowed to Massachusetts, which will be known to be unjust.

Mr. PINCKNEY urged the propriety of increasing the number of Representatives allowed to North Carolina.

Mr. BEDFORD contended for an increase in favor of Rhode Island, and of Delaware also.

On the question for allowing two Representatives to Rhode Island, it passed in the negative,—

New Hampshire, Delaware, Maryland, North Carolina, Georgia, aye—5; Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina, no—6.

On the question for allowing six to North Carolina, it passed in the negative,—

Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—5; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, no—6.

Article 1, Sect. 10, (the second paragraph) “No State shall, without the consent of Congress, lay imposts or

duties on imports or exports ; nor with such consent, but to the use of the Treasury of the United States."

In consequence of the proviso moved by Colonel MASON, and agreed to on the 13th of Sept., (Page 719,) this part of the Section was laid aside in favour of the following substitute, viz : "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the nett produce of all duties and imposts, laid by any State on imports or exports shall be for the use of the Treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress."

On the motion to strike out the last part, "and all such laws shall be subject to the revision and control of the Congress," it passed in the negative, —

Virginia, North Carolina, Georgia, aye—8 ; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, no—7 ; Pennsylvania, divided.

The substitute was then agreed to, — Virginia alone being in the negative.

The remainder of the paragraph being under consideration, viz : "nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another State nor with any foreign power, nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until Congress can be consulted," —

Mr. McHENRY and Mr. CARROLL moved, that "no State shall be restrained from laying duties of tonnage for the purpose of clearing harbours and erecting light-houses."

Col. MASON, in support of this, explained and urged the situation of the Chesapeake, which peculiarly required expenses of this sort.

Mr. GOUVERNEUR MORRIS. The States are not restrained from laying tonnage, as the Constitution now stands. The

exception proposed will imply the contrary, and will put the States in a worse condition than the gentleman (Col. MASON) wishes.

Mr. MADISON. Whether the States are now restrained from laying tonnage duties, depends on the extent of the power "to regulate commerce." These terms are vague, but seem to exclude this power of the States. They may certainly be restrained by treaty. He observed that there were other objects for tonnage duties, as the support of seamen, &c. He was more and more convinced that the regulation of commerce was in its nature indivisible, and ought to be wholly under one authority.

Mr. SHERMAN. The power of the United States to regulate trade being supreme, can control interferences of the State regulations, when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

Mr. LANGDON insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the States ought to have nothing to do with it.

On motion, "that no State shall lay any duty on tonnage without the consent of Congress,"—

New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, South Carolina, aye — 6; Pennsylvania, Virginia, North Carolina, Georgia, no — 4; Connecticut, divided.

The remainder of the paragraph was then remoulded and passed, as follows, viz: "No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Article 2, Sect. 1, (the sixth paragraph) the words, "or the period for choosing another President arrive," were changed into, "or a President shall be elected," conformably to a vote of the seventh of September.

Mr. RUTLEDGE and Doctor FRANKLIN moved to annex

to the end of the seventh paragraph of Article 2, Sect. 1, "and he (the President) shall not receive, within that period, any other emolument from the United States or any of them."

On which question,—

New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, aye — 7; Connecticut, New Jersey, Delaware, North Carolina, no — 4.

Article 2, Sect. 2. "He shall have power to grant reprieves and pardons for offences against the United States," &c.

Mr. RANDOLPH moved to except "cases of treason. The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The traitors may be his own instruments.

Col. MASON supported the motion.

Mr. GOUVERNEUR MORRIS had rather there should be no pardon for treason, than let the power devolve on the Legislature.

Mr. WILSON. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt, he can be impeached and prosecuted.

Mr. KING thought it would be inconsistent with the constitutional separation of the Executive and Legislative powers, to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State; the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of pardon.

Mr. MADISON admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President, that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He would prefer to either, an

association of the Senate, as a council of advice, with the President.

Mr. RANDOLPH could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body.

Col. MASON. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur; and the President moreover can require two-thirds of both Houses.

On the motion of Mr. RANDOLPH,—

Virginia, Georgia, aye — 2; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no — 8; Connecticut, divided.

Article 2, Section 2, (the second paragraph). To the end of this Mr. GOUVERNEUR MORRIS moved to annex, “but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.”

Mr. SHERMAN seconded the motion.

Mr. MADISON. It does not go far enough, if it be necessary at all. Superior officers below heads of departments ought in some cases to have the appointment of the lesser offices.

Mr. GOUVERNEUR MORRIS. There is no necessity. Blank commissions can be sent.

On the motion,—New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, aye — 5; Massachusetts, Delaware, Virginia, South Carolina, Georgia, no — 5; Maryland, divided.

The motion being lost, by an equal division of votes, it was urged that it be put a second time, some such provision being too necessary to be omitted; and on a second question, it was agreed to, *nem. con.*

Article 2, Sect. 1. The words, “and not *per capita*,” were struck out, as superfluous; and the words, “by the Representatives,” also, as improper, the choice of Presi-

dent being in another mode, as well as eventually by the House of Representatives.

Article 2, Sect. 2. After the words, "officers of the United States whose appointments are not otherwise provided for," were added the words, "and which shall be established by law."

Article 3, Sect. 2, (the third paragraph.) Mr. PINCKNEY and Mr. GERRY moved to annex to the end, "and a trial by jury shall be preserved as usual in civil cases."

Mr. GORHAM. The constitution of juries is different in different States, and the trial itself is *usual* in different cases in different States.

Mr. KING urged the same objections.

General PINCKNEY also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to, *nem. con.*

Article 4, Sect. 2, (the third paragraph,) the term "legally" was struck out; and the words, "under the laws thereof," inserted after the word "State," in compliance with the wish of some who thought the term *legal* equivocal, and favoring the idea that slavery was legal in a moral view.

Article 4, Sect. 3. "New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress."

Mr. GERRY moved to insert, after, "or parts of States," the words, "or a State and part of a State;" which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the Committee.

Article 4, Sect. 4. After the word "Executive," were inserted the words, "when the Legislature cannot be convened."

Article 5. "The Congress, whenever two-thirds of both

Houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress : provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth Section of Article 1."

Mr. SHERMAN expressed his fears that three-fourths of the States might be brought to do things fatal to particular States ; as abolishing them altogether, or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended, so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Colonel MASON thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind, would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.

Mr. GOUVERNEUR MORRIS and Mr. GERRY moved to amend the Article, so as to require a Convention on application of two-thirds of the States.

Mr. MADISON did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the States, as to call a Convention on the like application. He saw no objection, however, against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, &c., which in constitutional regulations ought to be as much as possible avoided.

The motion of GOUVERNEUR MORRIS and Mr. GERRY was agreed to, *nem. con.*

Mr. SHERMAN moved to strike out of Article 5, after "legislatures," the words, "of three-fourths," and so after the word "Conventions," leaving future Conventions to act in this matter like the present Convention, according to circumstances.

On this motion,—

Massachusetts, Connecticut, New Jersey, aye — 3; Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 7; New Hampshire, divided.

Mr. GERRY moved to strike out the words, "or by Conventions in three-fourths thereof." On which motion,—

Connecticut, aye — 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 10.

Mr. SHERMAN moved, according to his idea above expressed, to annex to the end of the Article a further proviso "that no State shall, without its consent, be affected in its internal police, or deprived of its equal suffrage in the Senate."

Mr. MADISON. Begin with these special provisos, and every State will insist on them, for their boundaries, exports, &c.

On the motion of Mr. SHERMAN,—

Connecticut, New Jersey, Delaware, aye — 3; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 8.

Mr. SHERMAN then moved to strike out Article 5 altogether.

Mr. BREARLY seconded the motion; on which,—

Connecticut, New Jersey, aye — 2; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no — 8; Delaware, divided.

Mr. GOUVERNEUR MORRIS moved to annex a further

proviso, "that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

This motion, being dictated by the circulating murmurs of the small States, was agreed to without debate, no one opposing it, or, on the question, saying, no.

Colonel MASON, expressing his discontent at the power given to Congress, by a bare majority to pass navigation acts, which he said would not only enhance the freight, a consequence he did not so much regard, but would enable a few rich merchants in Philadelphia, New York and Boston, to monopolize the staples of the Southern States, and reduce their value perhaps fifty per cent., moved a further proviso, "that no law in the nature of a navigation act be passed before the year 1808, without the consent of two-thirds of each branch of the Legislature. On which motion,—

Maryland, Virginia, Georgia aye—3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no—7; North Carolina, absent.

Mr. RANDOLPH, animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing, "that amendments to the plan might be offered by the State conventions, which should be submitted to, and finally decided on by, another general convention." Should this proposition be disregarded, it would, he said, be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Col. MASON seconded and followed Mr. RANDOLPH in animadversions on the dangerous power and structure of the Government, concluding that it would end either in

monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention, as proposed, he could sign.

Mr. PINCKNEY. These declarations from members so respectable, at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations and amendments of the different States, on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The States will never agree in their plans, and the deputies to a second convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others, to the plan. He objected to the contemptible weakness and dependence of the Executive. He objected to the power of a majority, only, of Congress, over commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr. GERRY stated the objections which determined him to withhold his name from the Constitution: 1, the duration and re-eligibility of the Senate; 2, the power of the House of Representatives to conceal their Journals; 3, the power of Congress over the places of election; 4, the unlimited power of Congress over their own compensation; 5, that Massachusetts has not a due share of representatives allotted to her; 6, that three-fifths of the blacks are to be represented, as if they were freemen; 7, that under the power over commerce, monopolies may be established; 8, the Vice

President being made head of the Senate. He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure — first, by the general power of the Legislature to make what laws they may please to call “necessary and proper;” secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. Under such a view of the Constitution the best that could be done, he conceived, was to provide for a second general Convention.

On the question, on the proposition of Mr. RANDOLPH, all the States answered, no.

On the question to agree to the Constitution, as amended, all the States, aye.

The Constitution was then ordered to be engrossed, and the House

Adjourned.

MONDAY, SEPTEMBER 17TH.

In Convention.—The engrossed Constitution being read,—

Doctor FRANKLIN rose with a speech in his hand, which he had reduced to writing for his own convenience, and which Mr. WILSON read in the words following.

“Mr. PRESIDENT:

“I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment, of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ

from them, it is so far error. Steele, a Protestant, in a dedication, tells the Pope, that the only difference between our churches, in their opinions of the certainty of their doctrines, is, 'the Church of Rome is infallible, and the Church of England is never in the wrong.' But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself, that is always in the right — *il n'y a que moi qui a toujours raison.*'

"In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a General Government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of

them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavour to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations, as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion — on the general opinion of the goodness of the government as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavours to the means of having it well administered.

“On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.” He then moved that the Constitution be signed by the members, and offered the following as a convenient form, viz: “Done in Convention by the unanimous consent of *the States* present, the seventeenth of September, &c. In witness whereof we have hereunto subscribed our names.”

This ambiguous form had been drawn up by Mr. GOUVERNEUR MORRIS, in order to gain the dissenting members, and put into the hands of Doctor FRANKLIN, that it might have the better chance of success.

Mr. GORHAM said, if it was not too late, he could wish, for the purpose of lessening objections to the Constitution, that the clause, declaring that “the number of Representatives shall not exceed one for every forty thousand,” which

had produced so much discussion, might be yet reconsidered, in order to strike out "forty thousand," and insert "thirty thousand." This would not, he remarked, establish that as an absolute rule, but only give Congress a greater latitude, which could not be thought unreasonable.

Mr. KING and Mr. CARROLL seconded and supported the ideas of Mr. GORHAM.

When the President rose, for the purpose of putting the question, he said, that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and, it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered, by many members of the Convention an insufficient security for the rights and interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan ; and late as the present moment was for admitting amendments, he thought this of so much consequence, that it would give him much satisfaction to see it adopted.*

No opposition was made to the proposition of Mr. GORHAM, and it was agreed to unanimously.

On the question to agree to the Constitution, enrolled, in order to be signed, it was agreed to, all the *States* answering, aye.

Mr. RANDOLPH then rose, and with an allusion to the observations of Dr. FRANKLIN, apologized for his refusing to sign the Constitution, notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth. He said, however, that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be

* This was the only occasion on which the President entered at all into the discussions of the Convention.

governed by his duty, as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan, and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr. GOUVERNEUR MORRIS said, that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth, all other considerations will be laid aside, and the great question will be, shall there be a National Government, or not? and this must take place, or a general anarchy will be the alternative. He remarked that the signing, in the form proposed, related only to the fact that *the States* present were unanimous.

Mr. WILLIAMSON suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members* who disliked the Constitution. For himself he did not think a better plan was to be expected, and had no scruples against putting his name to it.

Mr. HAMILTON expressed his anxiety that every member should sign. A few characters of consequence, by opposing, or even refusing to sign the Constitution, might do infinite mischief, by kindling the latent sparks that lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and

* He alluded to Mr. Blount for one.

the chance of good to be expected from the plan on the other?

Mr. BLOUNT said, he had declared that he would not sign so as to pledge himself in support of the plan, but he was relieved by the form proposed, and would, without committing himself, attest the fact that the plan was the unanimous act of the States in Convention.

Doctor FRANKLIN expressed his fears, from what Mr. RANDOLPH had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared, that, when drawing up that paper, he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to Mr. RANDOLPH for having brought forward the plan in the first instance and for the assistance he had given in its progress; and hoped that he would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

Mr. RANDOLPH could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form, therefore, could make no difference with him. He repeated, that, in refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to hesitate,—much less, to change. He repeated, also, his persuasion, that the holding out this plan, with a final alternative to the people of accepting or rejecting it *in toto*, would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it.

Mr. GERRY described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject which had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound, as he was disposed, to treat it with

the respect due to the act of the Convention. He hoped he should not violate that respect in declaring, on this occasion, his fears that a civil war may result from the present crisis of the United States. In Massachusetts, particularly, he saw the danger of this calamitous event. In that State there are two parties, one devoted to Democracy, the worst, he thought, of all political evils; the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons, that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not, therefore, by signing the Constitution, pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Doctor FRANKLIN, he could not, he said, but view them as levelled at himself and the other gentlemen who meant not to sign.

General PINCKNEY. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid, and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Doctor FRANKLIN. It is too soon to pledge ourselves, before Congress and our constituents shall have approved the plan.

Mr. INGERSOLL did not consider the signing either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation of what, all things considered, was the most eligible.

On the motion of Doctor FRANKLIN, —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye — 10; South Carolina, divided.*

Mr. KING suggested that the Journals of the Convention should either be destroyed, or deposited in the custody of the President. He thought, if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

Mr. WILSON preferred the second expedient. He had at one time liked the first best; but as false suggestions may be propagated, it should not be made impossible to contradict them.

A question was then put on depositing the Journals and other papers of the Convention, in the hands of the President; on which, —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye — 10; Maryland, † no — 1.

The President having asked, what the convention meant should be done with the Journals, &c. whether copies were to be allowed to the members, if applied for, it was resolved, *nem. con.* “that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution.”

The members then proceeded to sign the Constitution, as finally amended, as follows:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

*General PINCKNEY and Mr. BUTLER disliked the equivocal form of signing, and on that account voted in the negative.

† This negative of Maryland was occasioned by the language of the instructions to the Deputies of that State, which required them to report to the State the proceedings of the Convention.

ARTICLE I.

Sect. 1. All legislative powers herein granted; shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. The House of Representatives shall be composed of Members chosen every second year, by the people of the several states; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend

further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sect. 4. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member.

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment, require secrecy, and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the Journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases, except treason, felony, and breach of the

peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same, and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Sect. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be

necessary, (except on a question of adjournment,) shall be presented to the President of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress shall have power —

* To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States.

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post offices and post roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

✓ To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

* That "To lay and collect taxes, duties, imposts, and excises," ought not to be a separate clause from "to pay the debts," &c.; see in the printed Journal of the Convention, the report of the Committee of Eleven, September 4th — also copy of the draft of the Constitution as it stood Sept. 12th, printed by the Convention for the use of the members, now in the Department of State — also copy of the Constitution, as agreed to and signed, printed in sheets at the close of the Convention. The proviso "but all duties, imposts, and excises, shall be uniform," &c., by its immediate reference, suggests the same view of the text.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States — reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as any of the States, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder, or ex post facto law, shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.

Sect. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sect. 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term be elected as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding any office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the

choice of the President, the person having the greatest number of votes of the Electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President, neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend, the Constitution of the United States.”

Sect. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of

the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States except in cases of impeachment.

✓ He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sect. 3. He shall, from time to time, give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Sect. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sect. 1. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two wit-

nesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Sect. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Sect. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States; without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Sect. 4. The United States, shall guarantee to every State in this Union, a republican form of government, and shall protect each of them against invasion ; and, on application of the Legislature or the Executive, (when the Legislature cannot be convened,) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution ; or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ; Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every State shall be bound thereby ; anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives beforementioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States,

and of the several States, shall be bound by oath, or affirmation, to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the 17th day of September, in the year of our Lord 1787, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and *Deputy from Virginia.*

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM,
RUFUS KING.

Connecticut.

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

Delaware.

GEORGE READ,
GUNNING BEDFORD, Jr.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOME.

Maryland.

JAMES MCHENRY,
DANIEL of ST. THOMAS JENIFER,
DANIEL CARROLL.

Virginia.

JOHN BLAIR.
JAMES MADISON, Jr.

North Carolina.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

Pennsylvania.

BENJAMIN FRANKLIN,
 THOMAS MIFFLIN,
 ROBERT MORRIS,
 GEORGE CLYMER,
 THOMAS FITZSIMONS.
 JARED INGERSOLL,
 JAMES WILSON,
 GOUVERNEUR MORRIS.

South Carolina.

JOHN RUTLEDGE,
 CHARLES COTESWORTH PINCKNEY,
 CHARLES PINCKNEY,
 PIERCE BUTLER.

Georgia.

WILLIAM FEW.
 ABRAHAM BALDWIN.

Attest:

WILLIAM JACKSON, *Secretary.*

The Constitution being signed by all the members, except Mr. RANDOLPH, Mr. MASON and Mr. GERRY, who declined giving it the sanction of their names, the Convention dissolved itself by an adjournment sine die.

Whilst the last members were signing, Doctor FRANKLIN, looking towards the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art, a rising, from a setting, sun. I have, said he, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting; but now at length, I have the happiness to know, that it is a rising, and not a setting sun.

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